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

Re: AB No. 1242: Hartwell First United Methodist Church-Adverse Abandonment
And Discontinuance-The Great Walton Railroad Company, Inc., In Hart County,
GA

Dear Ms. Brown:

This letter is submitted electronically on behalf of The Great Walton Railroad Company (GWRC) along with GWRC's Reply in Opposition to the Adverse Abandonment and Discontinuance Filed By Hartwell First United Methodist Church. GWRC's Opposition is accompanied by Verified Statements of Bennie Ray Anderson, Joseph Dorsey, and Jonathan Talbot Colehower, the President and CEO of Quality Holdings, LLC, which is also opposed to the proposed abandonment.

The filing includes GWRC Exhibits No. 1 through 20 and GWRC Photographs 0 through 26. I hereby certify that a true copy is being e-mailed to Eric Hocky, counsel for Hartwell First United Methodist Church on this date. A true copy will also be forwarded to Mr. Hocky via Express Mail on May 31.

If you have any questions, please give me a call.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter

RHS:rs

Cc: Eric Hocky, Counsel for Hartwell First United Methodist Church

Before the
Surface Transportation Board
Washington, D.C. 20423

STB Docket No. AB 1242

HARTWELL FIRST UNITED METHODIST CHURCH
-ADVERSE ABANDONMENT AND DISCONTINUANCE-
HARTWELL RAILROAD COMPANY AND
THE GREAT WALTON RAILROAD COMPANY, INC.,
IN HART COUNTY, GA

REPLY OF GREAT WALTON RAILROAD COMPANY IN OPPOSITION TO THE
ADVERSE ABANDONMENT AND DISCONTINUANCE APPLICATION FILED BY
HARTWELL FIRST UNITED METHODIST CHURCH

The Great Walton Railroad Company, Inc. (GWRC), by and through
counsel, hereby files its reply in opposition to the application filed by the
Hartwell First United Methodist Church, Inc. (hereinafter Hartwell First).¹

Summary of Position

Hartwell First's adverse abandonment application should be denied for
the following reasons. First, there is a demonstrated current and future need
for GWRC to operate over the line of tracks that Hartwell First is seeking to
have abandoned. See Verified Statement (V.S.) Bennie Ray Anderson; V.S.
Jonathan Talbot Colehower. Second, GWRC has never had any intent to
abandon the lines in question. See V.S. Anderson at ¶ 1. Third, as its efforts to

¹ On April 18, 2017, a motion to dismiss was filed by the Hartwell Railroad
Company on the grounds that it has no interest in the line of railroad involved
in this proceeding. Therefore, it is not included as a party herein.

rehabilitate the tracks plainly demonstrate, GWRC has a firm intent to restore and upgrade its tracks so it can resume safe, efficient and compensatory common carrier operations over the tracks. *See generally*, V.S. Anderson; V.S. Joseph Dorsey. Fourth, had it not been for Hartwell First's deliberate interference with GWRC's restoration efforts, the line would be fully operational as of this date. V.S. Anderson at ¶ 12; V.S. Dorsey at ¶¶ 3, 6.

Fifth, although Hartwell First insists that GWRC's restoration efforts caused it to trespass on Hartwell First real property, that claim lacks merit. Although GWRC has utilized new rails and crossties and inserted additional ballast to support them, the physical location of the tracks, both mainline and runaround, was not shifted during restoration. V.S. Anderson at ¶ 12; V.S. Dorsey at ¶ 11. *See also*, Hartwell Railway's 1916 Valuation Map (GWRC Exhibit 1). Based on the foregoing, the Board should deny Hartwell First's application consistent with well-established Board and judicial precedents.

In its effort to eliminate GWRC's property rights so that it may expand its own real property holdings, Hartwell First has raised various irrelevant issues that have no bearing on the issue of whether the tracks should be abandoned. As a precaution, GWRC will briefly respond thereto. However, in resolving this proceeding, the Board should give little credence to Hartwell First's unsubstantiated claims that the Board has no jurisdiction over GWRC's runaround track and that Hartwell First owns the parcel of real estate on which the runaround track is located.

As the Board has noted in its decision, served May 4, 2017, “Hartwell First’s entire case-in-chief for adverse abandonment and discontinuance was filed with the application.” Hence, the record is devoid of any evidence to support Hartwell First’s unsubstantiated claim that it holds title to the parcel of land on which the 258-foot spur leading to Farmers Union Warehouse Company (Farmers Union) was constructed and operated by the Hartwell Railway prior to June 1916. GWRC has not yet been able to locate the underlying agreement that allowed Hartwell Railway to construct and operate the spur line to service Farmers Union, which, in 1907, acquired the property through which some of the spur track was constructed. However, there is nothing to suggest that C. I. Kidd, or any prior or subsequent owner of the adjoining parcel of land through which the track was constructed, ever objected to the construction of approximately 107 ± feet of the railroad’s spur that extended beyond the railroad’s original right-of-way.

It is GWRC’s position that Hartwell First lacks any legal title to that parcel. Because that track was fully operational in 2007, Hartwell First cannot claim it was unaware of the tracks existence when it decided to acquire the parcel of real property that is located to the south of GWRC’s mainline.²

In resolving this issue, the Board must consider the implications of a 1919 Agreement that converted the “258-foot spur track” into a “runaround track,” which thereafter was continuously used through the end of the

² V.S. Dorsey at ¶ 2.

twentieth century as an integral component of the railroads' interstate operations. As that Agreement confirms, the 258-foot spur track was owned by the Railroad. *See infra* at 28.

Even if the Board cannot resolve the title issue, it should definitively hold that it has exclusive jurisdiction pursuant to 49 U.S.C. § 10501(b) over the runaround track that was created by the joinder of the two spur tracks in 1919. Had it not been for Hartwell First's interference with GWRC's restoration of the runaround track in late November 2016, the runaround track would have been fully restored and placed back in full service months ago. V.S. Anderson at ¶ 12; V.S. Dorsey at ¶ 4.

ARGUMENT

As the Board is aware, because rail lines taken out of the interstate rail network can be lost forever, Congress has expressed a policy in favor of preservation of rail lines. *See Simmons v. ICC*, 697 F.2d 326, 328 (D.C. Cir. 1982). Consistent with this policy, the Board has been very reluctant to grant adverse abandonment applications. Even when a rail line is not in current use and parts of the tracks have been removed, judicial precedents have made it clear that the Board must consider whether there is a prospective need for the rail line.³ If, as here, there is evidence that a current and future need for rail

³ *Norfolk Southern Railway Company—Adverse Abandonment—St. Joseph County, IN*, STB Docket No. AB-290 (Sub-No. 286) (STB served Feb. 14, 2008), *aff'd sub nom. City of South Bend, IN v. STB*, 566 F.3d 1166 (D.C. Cir. 2009) (*South Bend*). In its decision, the Board specifically focused on Norfolk

service exists and that the railroad opposes the forced abandonment of its lines and is seeking to meet the expressed need for its services, adverse abandonment applications must be denied.

Hartwell First's arguments focus on two basic issues. First, it claims that because the tracks have not been used for a number of years, the Board should authorize their abandonment. Second, it argues that GWRC, by temporarily removing segments of the tracks in 2008, has already abandoned them and, in any event, has allowed the tracks to deteriorate to the point that they are not capable of handling train service. Even if its allegations could be viewed as factually correct, which they are not, Hartwell First cannot avoid the simple facts that (i) a current and future need exists to use the tracks; (ii) GWRC has never had any intent to abandon any of the tracks at issue herein; and (iii) although Hartwell First's landscaper covered the cross ties and ballast with dirt, the cross ties and ballast were not removed, but instead remained where they were placed over a century ago when the spur was constructed.⁴

As a long series of Interstate Commerce Commission (ICC), STB, and court decisions reflect, even when a line has been out of active service for years and when segments of tracks have been temporarily removed, the Board must still consider whether there is a prospective future need for the rail line.⁵

Southern's testimony that it would not be economically prohibitive to rehabilitate the lines if there was a reason to do so. *See slip op.* at 5.

⁴ *See* V.S Anderson at ¶ 12; V.S. Dorsey at ¶ 11.

⁵ *Seminole Gulf Rwy., L.P. – Adverse Abandonment – in Lee Cty., FL*, STB Docket No. AB-400 (Sub-No. 4)(STB served Nov. 18, 2004); *Yakima Interurban Lines Ass'n – Adverse Abandonment – in Yakima Cty., WA*, STB Docket No. AB-600

Because there is a clear and unquestionable future need for rail service that will be performed over the tracks involved herein, the Board must deny Hartwell First's adverse abandonment application.

A Proper Balancing of Interests Compels the Denial of the Application

Despite Hartwell First's repeated desire to "proceed with its state court remedy to quiet title to its property,"⁶ that desire does not control the disposition of this matter. As the D.C. Circuit admonished the Board in *Cross Harbor*, 374 F.3d at 1184, the Board "does not, and cannot, simply accede to a public entity's wishes in an abandonment proceeding; instead it weighs that interest as 'only one factor in {its} analysis'." See also *South Bend*, 566 F.3d at 1168-69, in which the D.C. Circuit found the Board had "duly balanced the relevant interests" by ruling against the City of South Bend and the religious orders based on its finding that there was "a reasonable potential for future use of the tracks."

The crucial factor in this proceeding is whether there is a current and future need for rail service over the segment of GWRC's line that is the subject of Hartwell First's adverse abandonment application. Due to the expanding needs of a customer for GWRC's rail service *and* the need to improve the safety

(STB served Nov. 19, 2004), reconsideration denied, *Yakima Interurban Lines Ass'n – Adverse Abandonment – in Yakima Cty., WA*, STB Docket No. AB-600 (STB served Sep. 15, 2005); *City of Colorado Springs—Petition for Declaratory Order—Abandonment Determination*, F.D. Nos. 31271 and 31230 (ICC served Mar. 22, 1989); *Cross Harbor R.R. v. STB*, 374 F.3d 1177, 1184 (D.C. Cir. 2004)(*Cross Harbor*).

⁶ Hartwell First Application at 24.

of its operations, the denial of Hartwell First's application is essential if GWRC is to continue to provide rail service for Quality Holdings, LLC (Quality) in a safe and economical fashion. See V.S. Anderson at ¶¶ 2-5; V.S. Colehower.

The runaround track that is the target of Hartwell First's application is a facility of a rail carrier that is under the Board's exclusive jurisdiction pursuant to 49 U.S.C. § 10501(b)(1). Thus, the Board should declare that the state court is preempted from taking action that would, in effect, be tantamount to forcing GWRC to abandon a key component of its line of railroad.

Hartwell First claims that the tracks have not been used to provide local service "since 1996 when the when the last customer on the Line Segment closed." Application at 17. Given the current and future need to use the tracks for future interstate operations, that claim is irrelevant and immaterial. Even if there are no current shippers located to the east of Athens Street, Hartwell First cannot avoid the fact that the tracks have been used for operational purposes years after the last shipper to the east of Athens Street ceased using rail service. V.S. Anderson at ¶ 5. Furthermore, if the tracks are retained in place for operational purposes, there is a possibility that a new customer could locate on the tracks to the east of Webb Street. This hope was expressed by the City of Hartwell in 2009. See GWRC Exhibit 10, Letter to David Aldrich, Hartwell City Manager, dated April 6, 2009. Moreover, the tracks could be used to perform railroad excursion activities in conjunction with TORCH's efforts to preserve the historical nature of the area. V.S. Anderson at ¶ 21.

The same is true regarding Hartwell First's argument that segments of GWRC's tracks were removed in 2008. Those assertions must be viewed in light of multiple recent decisions of the Board that have denied adverse abandonment applications.⁷ The situation herein is strikingly similar to that which caused the Board, in 2008, to deny the adverse abandonment authority to the religious orders and the City of South Bend in *Norfolk Southern Railway Company—Adverse Abandonment—St. Joseph County, IN*, STB Docket No. AB-290 (Sub-No. 286) (STB served Feb. 14, 2008), *aff'd sub nom. City of South Bend, IN v. STB*, 566 F.3d 1166 (D.C. Cir. 2009). Similar to the situation herein, that proceeding involved tracks that ran through Holy Cross Village at Notre Dame, a retirement village, and the campuses of the University of Notre Dame, Holy Cross College and St. Mary's College. Consistent with Congress' expressed policy in favor of preservation of rail lines, the Board denied the adverse abandonment application upon finding that the line *could* be used in the future.

In the *South Bend* case, no rail service had been provided for over 12 years before the adverse abandonment application was filed. Moreover, the mainline switch to the tracks had been disconnected and some tracks removed. The line was in poor condition and needed to be rehabilitated if rail service were to be reinstated. Multiple tracks that intersected with streets in South Bend had been paved over. In short, the lines had been temporarily severed

⁷ See n. 5, *supra*.

from the interstate rail network. Finally, Notre Dame, the only potential rail customer located along the lines, had publicly announced before the application was filed that it would not support future shipments of coal over the line.

Nevertheless, the Board denied the application upon finding that even though Notre Dame had stated it would not use rail service in the future, there was a possibility that it *could* change its mind because its coal plant was capable of handling rail deliveries. In addition, because Buckeye Industrial Mining Company, the provider of the University's coal pursuant to a long-term supply contract, supported the plan to resume coal deliveries by rail and estimated that 2 weekly coal trains would replace several thousand trucks, the Board found there was no doubt that traffic that *could* use the lines was available. Finally, because a potential substitute for Norfolk Southern had materialized, the Board denied the adverse abandonment application.

In denying South Bend's application, the Board gave no weight to the expressed concerns of the City and the religious orders regarding the proximity of the line to residential areas, parks, schools, and recreational centers. The same was true with respect to the impact on city streets that would follow the reinstitution of rail operations. Finding possible plans alone do not warrant removing the lines from the national rail transportation network, the Board discounted testimony that the line's right-of-way was needed for the installation of a storm water sewer and a recreational trail.

In *South Bend*, the City's expressed concern about the noise, danger, and interference with vehicular traffic that would result from renewed rail service, which echoes Hartwell First's arguments, was rejected. As the Board noted, any operations over the lines would be subject to safety rules imposed by the Federal Railroad Administration and, in any event, it was unlikely that renewed service with projected movements of 2 trains a week, would have a significant impact on the City.

Regarding the religious Orders, the Board noted they had conducted educational and other beneficial activities for many years, notwithstanding the presence of, and in years past, operations over, the lines. Also, while the Orders might prefer to annex the rights-of-way, the Board found that the purpose of its statutory power "is to prevent interstate commerce from being unreasonably interfered with, and to shield useful rail properties from annexation for the benefit of local interests. To justify withdrawing our protective jurisdiction over a rail line, we require a greater showing than that a local activity, however meritorious, would be somehow enhanced if the line were to be abandoned." Slip op. at 7.

Plainly, the *South Bend* precedent controls in this case, particularly when there is a demonstrated immediate need for GWRC to restore and retain the tracks. As Mr. Colehower's testimony conclusively demonstrates, in this case, there is no need to wait for the possibility that future traffic might materialize. It already exists and is expanding. Indeed, GWRC's efforts to rehabilitate the

tracks is driven by the fact that the tracks are currently needed to provide service to a shipper.

There is an immediate and urgent need to restore the tracks.

In contrast to the situation in *South Bend*, where the Board relied on a mere possibility that future rail operations could be initiated by a third party, GWRC has an immediate need to restore the tracks. This must be done to provide safe, economical rail operations in the future on behalf of Quality Holdings, a customer that is dependent on rail service and that has recently taken steps to expand its business. Hence, unlike the situation in *South Bend*, a present need clearly exists to restore the tracks so that efficient, future rail service can be provided. As Jonathan Colehower, the President and CEO of Quality Holdings, has testified, because abandonment of GWRC's tracks will adversely impact Quality, he fully supports GWRC's efforts to preserve its ability to utilize the tracks that are at issue herein. *See* V.S. Colehower.⁸

Quality "which operates a 131,449 square-foot manufacturing plant and currently employs approximately 100 employees in Hartwell, is the premier manufacturer of plastics in the southeast part of the country." V.S. Colehower at ¶3. As Mr. Colehower has also explained at ¶ 3, Quality:

is engaged in the plastics business and manufactures rotationally molded products. About eighty (80)

⁸ Mr. Colehower previously testified in a hearing in federal court involving Great Walton's motion to dissolve the Emergency Injunction issued by the state court. The transcript of Mr. Colehower's testimony in Case No. 3:15-CV-169, *Hartwell First United Methodist Church v. Hartwell Railroad Company, Inc.*, (M.D. Ga.), is attached as GWRC Exhibit 17.

percent of its raw materials consists of a polyethylene substance called LLDPE. The raw material is in the form of pellets which, after being unloaded from the rail hopper cars in which they are shipped, are pulverized into a powder. After being colored, the powder is put into a cast aluminum mold that rotates in a large oven. While the product is being rotated, the polyethylene melts and covers the inside of the mold and is cooked for around 15 minutes. After the mold is cooled, the product is removed from the mold.

The Board should carefully note Mr. Colehower's testimony (V.S. Colehower at ¶ 4) that his company is dependent on rail service, which provides the company a price advantage in the market. If rail service is not available, his company would experience an increase in the cost of its raw materials from 72 cents to 82 cents per pound (or more than ten percent). V.S. Colehower at ¶ 4. As he also explained, having the ability to receive raw materials by rail at his company gives it a cost advantage in the market. As he testified before the Federal Court, "I'd love to say that our customers come to us because of our product quality or our service, but there is no doubt that price is a huge factor and having that price advantage gives us an advantage in the market." GWRC Exhibit 17 at 7. And, as reported in an article published on September 20, 2016, in the Hartwell Sun, entitled *Quality Holdings: A best kept secret in Hartwell*, Quality's Director of Operations and COO, Kenneth Long, was quoted as follows:

Our success is based on how we handle our raw materials. We have the ability to do things nobody else in the business is able to do. There is no question that the rail systems gives us such an advantage. Shipping a big hollow part is expensive. You want to have the ability to produce the product as close to you

as you can to keep the expenses down. It reduces the cost for our customers.⁹

In his Verified Statement, Mr. Colehower has confirmed that, without rail service, Quality's business would be forced to incur additional material handling costs. As he has explained (V.S. Colehower at ¶ 4):

From an overall logistics standpoint, receiving raw materials by rail car is straight forward. When the rail car arrives, a tube is connected underneath it and the pellets are pulled into the plant through a vacuum directly into the top of the pulverizer. If forced to utilize trucks, Quality would have to figure a way to unload the material, move it to the pulverizer and then somehow get it up into a gravity feed or some other way to get it to the top of the pulverizer. This would entail business process changes that would substantially increase operating costs. The bottom line is that price is a huge factor for our customers. There can be no doubt that our ability to take advantage of rail service, which features direct delivery over our spur track to our facility, contributes to Quality's financial successes.

As the Board has previously recognized, forcing a shipper to utilize trucking would undercut its goal of promoting competition between rail and trucking services. *Wisconsin Dep't of Transp. – Abandonment Exemption*, 1988 WL 225048 (I.C.C.), at *5 (Nov. 23, 1988). As the D.C. Circuit has also noted, in adverse abandonment cases the Board has long recognized that the impact on existing shippers must be considered. *Cross Harbor*, 374 F.3d at 1187 (citing *Waterloo Railway Company – Adverse Abandonment*, 2004 WL 941227 (I.C.C.), at *3 (April 30, 2004).

⁹ GWRC Exhibit 18.

Mr. Colehower has further testified that Quality's business is growing and that the company is looking at new opportunities to expand. V.S. Colehower at ¶¶ 7-8. Having rail service is an essential element of the company's ability to do so.

As Mr. Anderson has explained in detail,¹⁰ if GWRC cannot use the turnaround track that has existed for nearly a full century, it would have no choice but to shove cars ahead of the locomotive through approximately 45 public and private road crossings. This would add to its labor costs as each train would require a person to flag every crossing. It would also adversely impact the safety of HRR's operations because it would require an employee to ride the "head end" of the car being shoved while hanging on the side of it.

Such operations would be extremely inefficient. As Mr. Anderson has explained, the trip from Bowersville with the locomotive on the front end takes about thirty minutes.¹¹ The return trip back to Bowersville takes approximately two hours due to the need to stop and flag each of the crossings. This plainly involves an unsafe and unreasonable period of time for an employee to hang on the side of a rail car, especially in inclement weather. This too would be contrary to the rail transportation policy "to operate transportation facilities

¹⁰ V.S. Anderson, ¶¶ 2-3.

¹¹ *Id.* at ¶ 3.

and equipment without detriment to the public health and safety,”¹² and to encourage “safe and suitable working conditions in the railroad industry.”¹³

Based on the assumption that the Board will follow its precedents and deny Hartwell First’s adverse abandonment application, GWRC has been willing to absorb the additional costs of providing service to Quality on an interim basis. However, if GWRC were to lose the ability to utilize its tracks that Hartwell First has targeted for abandonment, GWRC will have little choice but to abandon the line. Such result would adversely impact Quality, GWRC, and Norfolk Southern, which originates the traffic that moves to Quality. Given the fact that Quality has more than doubled the number of its employees during the past two years and is looking to expand its business in the future, a proper balancing of all interests favors the denial of Hartwell First’s application. GWRC respectfully submits that its service, which has contributed to Quality’s ability to double the number of employees and expand its business, also benefits the City of Hartwell and Hart County.

Without question, there is a compelling immediate need to retain the tracks for future rail operations. Although the adverse abandonment of the tracks could allow Hartwell First to pursue clear title without the right-of-way easement, that narrow objective does not supersede the Board’s well-

¹² 49 U.S.C. § 10101(8).

¹³ 49 U.S.C. § 10101(11).

recognized statutory duty to preserve and promote rail service. *Cross Harbor*, 374 F.3d at 1187 (citing multiple Board and ICC precedents).

Viewed in a slightly different manner, GWRC's future use of the tracks is not going to have a significant impact on Hartwell First's ability to perform its ministry. After all, despite Hartwell First's attempt to distance itself from the railroad by claiming that it "only became 'a neighbor' of the Line Segment when it was donated property on the north side of the Line Segment,"¹⁴ the fact of the matter is that Hartwell First chose to spend millions of dollars to acquire the property on the south side of the rail segment knowing full well that the tracks were there.

The Temporary Removal of Tracks Does Not Constitute Abandonment

As Mr. Anderson has testified, because GWRC was not actively using them, the rails that crossed Webb Street were temporarily removed for the convenience of other parties.¹⁵ Even though a tiny segment of GWRC's lines were *temporarily* taken out of service in 2008, that does not support Hartwell First's application.

As the Board explained in its February 14, 2008 decision in *South Bend*, even though multiple tracks had been paved over and the switch to Norfolk Southern's main line had been removed, that did not prove that the tracks had

¹⁴ Reply of Hartwell First United Methodist Church to Petition for Reconsideration of Waive[r] of Filing Fees and Request to Hold Matter in Abeyance, filed May 2, 2017, at p. 8.

¹⁵ V.S. Anderson at ¶ 13.

been degraded to the point that rail service was no longer feasible. Those defects were summarily dismissed with the comment that “[t]o be sure, the Lines would require some work before they could become operational.” *South Bend*, slip op. at 5.¹⁶

Here, when GWRC allowed the Georgia DOT to pave over the rights-of-way of both its runaround track and its mainline, it did so with the understanding that the tracks would be restored if necessary. Correspondence with the City Manager of the City of Hartwell, dated April 6, 2009, and with the Georgia DOT, dated August 5, 2009, reflects GWRC’s reservation of its right to resume service when needed.¹⁷ Moreover, even if Georgia DOT and the City were to oppose GWRC’s retained right to reinstall the tracks, which has not happened, that would not relieve GWRC of its ultimate responsibility to restore the tracks. *See, e.g., The Baltimore and Ohio Railroad Company, Metropolitan Southern Railroad Company and Washington and Western Maryland Railway Company Abandonment and Discontinuance of Service—In Montgomery County, MD., and the District of Columbia*, 1987 WL 97810 at *2, n.1 (I.C.C., March 16, 1987).

Furthermore, although the rails that crossed Webb Street were temporarily removed in 2009, they were retained in place on the east side of

¹⁶ *Cf. Railroad Ventures, Inc. v. STB*, 299 F.3d. 523, 559-60 (6th Cir. 2002) (fact that a carrier paved over parts of line and disconnected signal did not prevent forced sale of line to another carrier interested in restoring service).

¹⁷ Letter from Dave Bishop to David Aldrich, City Manager, City of Hartwell (GWRC Exhibit 10) and letter from Dave Bishop to Todd Wood, Area Engineer, GADOT (GWRC Exhibit 11).

the street. See V.S. Dorsey at ¶ 11 and GWRC Photographs 1 through 5. As noted previously, while a portion of the rails in the northernmost tracks to the west of Webb Street were temporarily removed, the switches, crossties and ballast were deliberately left in place. However, the crossties and ballast were covered over with dirt by Hartwell First's landscapers. As photographs 5 through 8 attached to Mr. Dorsey's Verified Statement demonstrate, GWRC was in the process of restoring the rails when the state court, at First Hartwell's behest, on November 28, 2016, enjoined it from completing the restoration of tracks beyond the original right-of-way.

When it temporarily removed a portion of the runaround track, GWRC did so only after it entered into a series of license agreements that it reached with Hartwell First. See GWRC Exhibits 7-9. On December 20, 2007, GWRC, using its registered Trade Name of "Hartwell Railroad Company," granted Hartwell First a License to use a private road crossing "located at the present southerly end of Chandler Street".¹⁸ Paragraph 4 of that License provides that Hartwell First would maintain the crossing "in accordance with the requirements of Railroad looking to the safe and convenient operation and maintenance of its said line of railroad." Paragraph 7 requires a vehicle approaching the crossing shall stop and "shall not proceed over said track of Railroad until the driver, or other person in charge thereof, shall have

¹⁸ A certified copy of the Trade Name is attached hereto, which was recorded in Walton County by Troutman Sanders on May 29, 1990, is attached hereto as Attachment A.

ascertained that no train engine or car of Railroad is approaching said crossing.”

In addition, Paragraph 11 provides that “Railroad reserves and accepts unto itself the paramount right to continue to occupy, possess and use the area of the crossing for any and all railroad purposes. Railroad shall not be obligated to make cuts in its trains for the crossing.” Plainly, such provisions do not reflect an intent to abandon the tracks.

On July 31, 2008, a further license was granted to Hartwell First that authorized it to use two private sidewalk crossings “as shown upon prints C100 Site Plan Hartwell First United Church and C300 Details each dated July 2007, hereunto annexed and made a part of this agreement.” GWRC Exhibit 8. The C100 Site Plan clearly reflects the fact that the sidewalks would cross over both sets of tracks. Most importantly, the certified copy of Drawing C100 attached to the August 1, 2008 Agreement shows that the Hartwell First property line lies to the north of the entirety of the former spur track that extends over Webb Street.

An explicit provision in paragraph 7 of the License Agreement requires “[i]n each instance when a individual shall approach said crossing, the same shall not proceed over said track of Railroad until they have ascertained that no train engine or car of Railroad is approaching said crossing.” Paragraph 9 also imposes a requirement that Hartwell First “will, at all times during the life of this agreement, keep the vegetation on its property cut in such manner and

to such extent as is necessary to permit a person approaching the crossing from either direction to see approaching trains before such person reaches a position of danger on or near the crossing.”

As was the case of the earlier License Agreement, paragraph 11 repeats the statement that “Railroad reserves and accepts unto itself the paramount right to continue to occupy, possess and use the area of the crossing for any and all railroad purposes. Railroad shall not be obligated to make cuts in its trains for the crossing.” Again, no intent to abandon is demonstrated in this agreement.

On August 1, 2008, Hartwell First was granted a third license which allowed it to “construct, maintain and remove a sanitary sewer and storm sewer ...”.¹⁹ This Agreement states that the location and dimensions of the involved parcels of real estate “are substantially as shown on print of Drawings C100, C200, and C300”. As the certified copies of Drawings C100 and C200 attached to the August 1, 2008 Agreement also reflect, the Hartwell First property line lies to the north of the entirety of the former spur track that extends over Webb Street.

It should be further noted that Article 14(a) of the August 1, 2008 Agreement committed Hartwell First to observe and be bound by GWRC’s rules:

with respect to standard clearances for all railroad
tracks located on or adjacent to the Premises covered

¹⁹ GWRC Exhibit 9.

by this agreement; that is to say, [Hartwell First] agrees to maintain and preserve an overhead space of 23 feet measured perpendicularly from the top of the rail (except that overhead clearance where wire lines extend over said track shall be such as may be prescribed by [GWRC] and a space 18 feet in width, measured 9 feet on each side from centerline of said track; provided, however, that the side clearance of 9 feet must be increased one and one-half (1-1/2) inches for every degree of curvature, which space shall be kept clear of any obstruction whatever, including but not limited to, all structures, facilities, or property of [Hartwell First] which are or may be placed or erected above or parallel to said track.

The foregoing license agreements plainly demonstrate that there was no intent to abandon the tracks and that GWRC expressly reserved the right to resume railroad operations over the tracks.²⁰ That Hartwell First may have mistakenly assumed that the Line had been abandoned when it acquired the real property located on the southern side of GWRC's tracks does not provide a basis for forcibly removing the Line so that rail operations cannot be resumed over the tracks. *Cf. Missouri Central Railroad Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company*, STB F.D. 33508, slip op. at 4, 6-7 (STB served Apr. 30, 1998), *aff's sub nom. Lee's Summit v. STB*, 231 F.3d 39 (D.C. Cir. 2000) (the fact that communities developed around moribund but never-abandoned rail line was not a basis for

²⁰ As the Georgia Supreme Court has long recognized, “[a]bandonment is largely a question of intent.” *Gaston v. Gainesville D. Electric Ry. Co.*, 48 S.E. 188, 189 (Ga. 1904), quoting *Holmes v. Jones*, 7 S.E. 168, 80 Ga. 659 (Ga., 1888).

prohibiting carrier from reinstituting rail service without first obtaining new STB authority).

As GWRC has recently discovered, although Hartwell First accepted the license agreements, it had no intention to honor them. Instead, following its acquisition of real property located to the south of GWRC's tracks, Hartwell First secretly undertook contemporaneous actions that set the stage for the current effort to force the closure of the tracks so that Hartwell First could annex GWRC's real property. Hartwell First's intent is clearly reflected in blueprint drawings commissioned by Hartwell First, dated July 2007, reflect the planned demolition of the tracks.²¹ In particular, a drawing referencing "PROJECT 06067, HARTWELL FIRST UNITED METHODIST CHURCH," dated July 2007, that is also entitled "C100 SITE PLAN," reflects the instruction "CONTRACTOR TO REMOVE PIPES IF RAILROAD DEMOLITION CONTRACTOR DID NOT." In addition, a drawing entitled "V-100, EXISTING CONDITION AND DEMOLITION PLAN" that relates to the same project reflects the statements "STORMWATER PIPE TO REMAIN AFTER DEMOLITION OF TRACKS" and "TRACKS TO BE DEMOLISHED BY OTHERS."

As Mr. Anderson has explained, during negotiations with Hartwell First, "we relied on the drawings that were provided by Hartwell First that showed that the tracks did not extend over Hartwell First's property line." V.S.

²¹ See GWRC Exhibits 12-14. These same documents are attached to the Petition for Reconsideration of Waiver of Filing Fees that was jointly filed by The Harwell Railroad Company and GWRC on April 17, 2017, which pleading and all attachments thereto incorporated herein by reference.

Anderson at ¶ 9. As he has also stated, “[h]ad I been aware of the undisclosed drawings that showed the tracks being removed at the time that the License Agreements were being negotiated, I would not have temporarily agreed to remove the spur track rails. Nor would I have allowed Hartwell First’s landscaper to cover the crossties and ballast with dirt.” V.S. Anderson at ¶ 9.

Finally, in granting Hartwell First the two crossing licenses, GWRC relied on Hartwell First’s agreement that it “shall not at any time own or claim any right, title or interest in or to railroad’s property occupied by Licensee’s crossing, nor shall the exercise of this Agreement for any length of time give rise to any title to said property or any right of interest in Licensee other than the license created hereby.”²² By bringing its suit against GWRC based on the claim that it owns the property occupied by its sidewalk crossings that pass over GWRC’s two sets of tracks, Hartwell First breached the crossing Agreement. Here again, the ownership issue will be resolved by the eminent domain proceeding.

The Torch Agreement Has No Bearing On This Proceeding

The Lease Agreement with TORCH of Hartwell, Inc. (TORCH)²³ does not reflect any intent to abandon GWRC’s line of railroad.²⁴ Nor does that

²² GWRC Exhibits 7 and 8 at ¶11.

²³ GWRC Exhibit 20.

²⁴ By way of background, TORCH is engaged in a project that will redevelop the historic area that surrounds the easternmost tracks and includes the old Hartwell railroad depot. Resumption of rail service over the runaround track will not adversely impact TORCH’s project.

Agreement authorize TORCH to do so. While Paragraph 5.1 provides that “Lessee shall be permitted **temporarily** to remove any and all rails in the block between Forest Avenue and Webb Street, as long as Lessee reinstalls all such rails at the conclusion of construction” (emphasis added), it does not authorize the permanent removal of any tracks. However, recognizing the potential need to install much heavier rails if it were to resume operations, GWRC did not impose a requirement that TORCH install far more expensive heavier rails when TORCH reinstalled any rail that it temporarily removed.

As Mr. Anderson has explained, GWRC recognizes that it is solely responsible for installing heavier rails that will ensure safe operations. V.S. Anderson at § 19. As a result, the Agreement provides that “Lessee shall not be obligated, however, to reinstall the rails in such a manner and to such specifications that the rails are able to support rail traffic.” This same intent is reflected at Paragraph 7.5, which provides that “[a]t Lessee’s request, and for such reasonable fee or cost as Lessor may reasonably charge, Lessor shall assist Lessee with the replacement or repair of any railroad ties on the rail line on the Leased Premises that are rotten or in a state of disrepair.”²⁵

The bottom line is that even though it has leased the real estate that underlies the tracks, GWRC has retained the common carrier obligation to

²⁵ At p. 17 of its Application, Hartwell First suggests the tracks are not “capable of handling train service.” That suggestion proves that Hartwell First has properly conceded that it “does not have the expertise to evaluate fully the condition of the Line Segment.”

operate over the line. As a result, there is nothing in the TORCH Agreement that precludes GWRC from using the tracks if a need exists.

**The Claim That GWRC Is Not Authorized To Operate
The Lines Of Track That It Acquired From Hartwell Railway
Cannot Be Sustained And Is Irrelevant And Immaterial**

In its Application, Hartwell First states that while GWRC obtained trackage rights authority to operate over the Hartwell Railway in 1990, it never obtained ICC authority to do so.²⁶ As the ICC file reflects, and as Mr. Anderson has explained, V. S. Anderson at ¶ 23, on March 14, 1990, Troutman Sanders filed a notice of exemption pursuant to 49 CFR §§ 1180.2(d) and (d)(7), 1180.4(g) and 1180.6. That filing, which was assigned F.D. No. 31626 – *Notice of Exemption*, covered **both** the acquisition of Hartwell Railway’s assets and trackage rights to operate over the tracks until such time as the asset purchase agreement was closed.²⁷

In March 1990, the ICC’s regulations specifically permitted the filing of related proceedings. See 49 C.F.R. § 1002.2(d)(10-1-89 Edition), attached hereto as GWRC Exhibit 15. ICC regulations then provided that only one fee was required for related proceedings, which fee was duly paid. Furthermore, to qualify for an exemption under 1180.2(d), the railroad had to file its verified notice of the transaction with the ICC at least *one week before the transaction*

²⁶ Hartwell First, Application at p. 4.

²⁷ Hartwell First’s claim, Application at 5, that the “notice of exemption itself related only to the grant of trackage rights to operate over the line of Hartwell Railway prior to the completion of the acquisition, and did not seek an exemption to acquire and operate the line” is flatly contradicted by the notice of exemption filed March 14, 1990.

was consummated, all of which was done. Because the transaction was not finally consummated until May, the foregoing requirement was satisfied. In short, because consummation was properly effected pursuant to ICC regulations, it would be impossible to undo the process some 27 years later.

Even if GWRC's acquisition of the assets could be said to be improper, which it was not, the Board, if it deems further action to be required, should be guided by the Supreme Court's decision in *Gilbertville Trucking Co. v. United States*, 371 U.S. 115, 129-130 (1962). As the ICC explained in *Association of P & C Dock Longshoremen v. The Pittsburgh and Conneaut Dock Company*, 8 I.C.C.2d 280, 295 (1992), quoting *Gilbertville*:

To rectify improperly acquired control, the Commission must impose remedies that are "corrective, not punitive," and while giving effect to the statutory violations, cause "as little injury as possible to the interests of private parties or the general public." *Gilbertville Trucking Co. v. United States*, 371 U.S. 115, 129-30 (1962).

In this instance, GWRC was legally able to acquire Hartwell Railway's assets and to take advantage of the Board's exemption so long as it filed its Notice of Exemption at least one week before it acquired the assets. That was done. Thus, it appears that the ICC inadvertently failed to publish a notice in the Federal Record that reflected the fact that Docket F. D. No. 31626 involved more than the trackage rights exemption. In order to address this inadvertent oversight, if it deems such a step to be necessary, the Board should issue a decision that *nunc pro tunc* would correct the inadvertent error. In any event, the doctrine of laches should prevent Hartwell First from challenging the

validity of the consummation of the sale of Hartwell Railway's assets to GWRC over 27 years after the fact.

**Hartwell First's Contention That The Board Lacks Jurisdiction
Over The Former Spur Track That Is Now An Integral Component Of
GWRC's Operations Ignores Reality**

The Board should reject Hartwell First's allegation that the Board lacks jurisdiction over a former 258-foot "spur track" that was initially constructed to serve the facilities of Farmers Union Warehouse, which were located just to the north of the point where the mainline intersects with Webb Street. That track is reflected on Hartwell Railway's Valuation Map, dated June 30, 1916. The track originally extended in an easterly direction from a point that started approximately 60 ± feet to the east of Chandler Street, which is located approximately 320 feet ± to the west of Webb Street. The spur ended at a point that was about three (3) feet short of the west side of South Webb Street.²⁸

To reach Farmer's Union's property, the spur had to be extended beyond the Hartwell Railway's right-of-way over the adjacent lot to the west. Hartwell Railway's Valuation Map indicates that in 1916, the adjacent lot was owned by C. I. Kidd. GWRC Exhibit 1. There is no indication whatsoever that Mr. Kidd, who has been described as "a prominent Hartwell citizen and a leading businessman whose financial success contributed to the economic growth of

²⁸ A map of the affected tracks reflecting street names is attached as GWRC Exhibit 5.

downtown Hartwell,”²⁹ ever protested the original construction of the spur or its subsequent extension across Webb Street.³⁰ Nor is there any indication that any other person did so.

Furthermore, Hartwell First’s jurisdictional argument fails to consider the full implications of a 1919 Agreement between the Director General of Railroads, by E. H. Coapman, Federal Manager of the Hartwell Railroad, and R. F. Clinkscales.³¹ That agreement caused the spur track on the west side of Webb Street to be joined with another spur track on the east side of Webb Street to create a runaround track that was joined at both ends with the mainline.

In the first paragraph of the 1919 Agreement, it was agreed that the Railroad:

will lay and construct an extension of 356 feet to the easterly end of **that certain existing spur track of the Railroad**, 258 feet in length at HARTWELL, in the County of Hart and State of Georgia, which springs from the main track of the Railroad, at a point thereon 4178 feet east of Milepost 1, and extends and with the said proposed 356 foot extension thereof will extend thence in an easterly direction for a distance of 614

²⁹ Historic Resources of Hartwell, Hart County, Georgia. As also mentioned in the article, Mr. Kidd, who died in 1929, was influential in supporting transportation. GWRC Exhibit 19.

³⁰ GWRC notes that Mr. Kidd was willing to pursue legal actions against its predecessor if he felt he had been wronged. *See Hartwell Ry. Co. v. Kidd*, 74 S.E. 310 (Ga. Ct. App. 1912) in which Mr. Kidd sued Hartwell Ry. for \$95.75.

³¹ On December 28, 1917, following the United States’ entry into World War I, President Wilson nationalized the entire railroad industry and control of the nation’s railroads, including Hartwell Railway, was given to the Director General of Railroads. Mr. Coapman was a Vice President of Southern Railway, which then owned and controlled Hartwell Railway.

feet, more or less; and will thereafter, during the life of this agreement, operate the entire track as extended, for the purpose of affording unto the party of the second part facilities for the shipment of his freight in carload quantities, over the lines of the Railroad and its connections; ALL being substantially as shown upon the blue-print map of survey, dated February 19, 1919, revised March 10th and April 22nd, 1919, hereto annexed and made a part of this agreement.

Emphasis added. See GWRC Exhibit 6.³²

The foregoing plainly indicates that the 258-foot spur to the west of Webb Street was *not* owned by Farmers Union Warehouse or the owners of the adjoining property to the west of the Farmers Union Lot. Moreover, the contemporaneous sketch prepared by the Southern Railway's Resident Engineer reflects a series of broken lines used to denote the location of fences and/or boundaries that are beyond the original right-of-way of the Hartwell Railway on the west side of Webb Street. Those lines indicate that an additional parcel of real property had been, or would be, acquired by the railroad (either Southern or the Hartwell Railway) prior to construction of the runaround track.

The sketch that accompanies the 1919 Agreements states that the "[n]ew R/W Line is 7.5' from present R/W Line and 7' from [the centerline of the] New Siding."³³ The sketch also reflects a note that reads as follows: "Note 50# Relay Rail to be used. Track to be constructed 13' from M.L." Such dimensions were

³² A color copy of the blue-print sketch is included with GWRC's Exhibit 6.

³³ See GWRC Exhibit 6.

required to allow the alignment of the two spurs located on both sides of Webb Street.

On August 5, 1922, following the termination of federal control of railroads, Hartwell Railway and Clinkscates agreed to continue the 1919 Agreement. Although Hartwell First suggests that the Clinkscates Agreement “can be terminated by either party on 60 days’ notice,”³⁴ that suggestion must be rejected in light of the Supreme Court’s decision in *Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134, 144 (1946). Accord *United States v. Baltimore & O.R. Co.*, 333 U.S. 169, 176 (1948) (when Congress enacted the Interstate Commerce Act, it did not intend railroad regulatory provisions to depend on who had legal title to transportation instrumentalities).

The “extension” or “joinder of the two spurs” resulted in the creation of a “runaround” track that measured 614 feet in length and connected with the existing mainline track at both ends of the runaround track. Most importantly, the two spurs were converted into components of Hartwell Railway’s mainline, which is clearly within the Board’s exclusive jurisdiction. As the Fifth Circuit has recognized, Because the use of the former spur tracks for many years included traffic movements which were part of the actual transportation haul, and not merely the loading, reloading, storage and switching of cars, the trackage was converted into lines of railroad that cannot be abandoned without

³⁴ Application at 4.

obtaining a certificate from the ICC or the Board. *See New Orleans Terminal Company v. Spencer*, 366 F.2d 160, 165-66 (5th Cir. 1966).

As Mr. Anderson has explained, the runaround track allowed a locomotive, following its arrival in Hartwell, to move from the east end of a train, to the west end of a train for a safe return to Bowersville after serving customers in Hartwell.³⁵ As reflected in GWRC Photographs 1 through 4, attached to Mr. Dorsey's Verified Statement, the tracks to the east of Webb Street remain in place and have never been removed.

Following Southern Railway's sale of Hartwell Railway to local businessmen in 1924, Hartwell Railway, without any objection being voiced by any party, utilized the runaround track as an integral component of its railroad operations until late in the 20th Century when all assets belonging to it were acquired by GWRC. Because GWRC has used, and will continue to use, the runaround track in the same fashion to serve Quality, it would be necessary to obtain the Board's approval to abandon the runaround track.

Because the extension and joinder of the existing tracks did not extend Hartwell Railway's service into a new territory, the creation of the runaround system is analogous to double-tracking – where a carrier adds a second track to an existing right-of-way. Therefore, it did not trigger any need to obtain new ICC authority, even if the actual construction occurred following enactment of the Esch-Cummings Act (a/k/a Transportation Act of 1920), Pub. L. 66-152,

³⁵ V. S. Anderson at ¶ 5.

41 Stat. 470, Feb. 28, 1920. As the ICC explained in *City of Detroit v. Canadian Nat'l Ry.*, 9 I.C.C. 1208, 1215-17 (1993), *aff'd sub nom. Detroit/ Wayne County Port Auth. v. I.C.C.*, 59 F.3d 1314, 1316-17 (D.C. Cir. 1995), the 1920 Act, for the first time, granted the ICC jurisdiction over the construction of new lines of railroad only if the construction extended a railroad's operations into new territory. *See also, Lee's Summit, Mo. v. Surface Transp. Bd.*, 231 F.3d 39, 42, n.3 (D.C. Cir. 2000) ("Improvement of existing track does not constitute 'construction,' and does not even trigger Board jurisdiction under 49 U.S.C. § 10901").

**Hartwell First's Claim That It Owns The Real Property
Underlying The Former Spur Used To Provide
Rail Service To Farmers Union Warehouse Is Not
Supported By Any Competent Evidence Of Record.**

Because the physical location of the tracks has been open and obvious for over a century, and because the 1919 Agreement indicates that the track that GWRC is trying to restore was owned by the Hartwell Railway in 1919, it appears that the Hartwell Railway either owned the underlying parcel of real estate or held an easement authorizing the construction and operation of the track. Because a thorough search of the official records of Hart County has not revealed a deed or other document that substantiates Hartwell First's claim that it owns the real property that underlies the track that GWRC is trying to restore, there is nothing that proves that Hartwell First has a superior right that would negate GWRC's property rights to the small parcel of real property on which the former 258-foot spur was constructed. In fact, as Mr. Dorsey has

explained, deeds that describe the Farmers Union Lot from 1922 have reduced the footage on Webb Street to only 90 feet from the 100-foot measurement that is shown on the original Farmers Union Lot. See V.S. Dorsey at ¶ 11. This strongly indicates that the parcel on which the “Railroad spur” was constructed was conveyed at some point to the railroad and could not have been acquired by Hartwell Mills or by Hartwell First. To resolve the ownership issue and moot the pending state court proceeding, GWRC has initiated an eminent domain proceeding pursuant to Georgia law.³⁶

Hartwell First, by declining to introduce deeds in its possession that allegedly reflect its ownership of the parcel on which GWRC’s runaround track is located, has clearly waived any right to present evidence regarding its alleged ownership interests. Therefore, the Board should disregard Hartwell First’s unsupported allegations of ownership in reaching its decision herein. It is, of course, “well settled that the interpretation of deeds and the determination of who owns good title are issues of State law that are outside the expertise of this Board.” *Central Kansas Railway LLC—Abandonment Exemption, Marion & McPherson Counties*, KS, 2001 WL 489991 at 2, 4-6. However, even if the Board cannot resolve the title issue, it should definitively hold that it has exclusive jurisdiction, pursuant to 49 U.S.C. § 10501(b), over the runaround track that was created by the joinder of the two spur tracks in 1919. Based on **the**

³⁶ While GWRC believes its right to occupy the land underlying the runaround track is clear, it recognizes that the fair market value of this very small parcel is much less than the anticipated litigation costs. It further recognizes it would be far more efficient, expeditious and certain to simply condemn the property.

immediate need to use the tracks to provide safe and economical service to Quality, the Board should find that Hartwell First is not entitled to any relief before the Board, which unquestionably has exclusive jurisdiction over the abandonment of all the tracks involved in this proceeding.

Given the time that has elapsed since Hartwell First initially announced its intention to file its application, **GWRC requests expeditious handling of this matter**. As the record reflects, the delay is attributed solely to Hartwell First. Not only has Hartwell First interfered with GWRC's efforts to rehabilitate its tracks but, by deliberately delaying the filing of its application by five months, has needlessly prolonged this proceeding to the detriment of both GWRC and Quality.

CONCLUSION

For all of the above-stated reasons, the Board should deny the adverse abandonment application filed by Hartwell First Methodist Church.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016
Telephone: 202-363-2011

Dated: May 30, 2017

ATTACHMENT A

Application to Register a Business
to Be Conducted Under A Trade Name
"HARTWELL RAILROAD COMPANY"

RECORDED MAY 29 1990

BOOK 3 PAGE
KATHY K. KEESEE, CLERK

STATE OF GEORGIA

COUNTY OF HART

The Undersigned Hereby Certifies: That it is conducting a business at Railroad and Jackson, City of Hartwell, County of Hart, State of Georgia 30643 under the trade name "HARTWELL RAILROAD COMPANY"; that the type of business it will conduct under said trade name is the operation of a railroad; that said business is composed of the following Georgia railroad corporation whose name and address are as follows:

THE GREAT WALTON RAILROAD COMPANY
Post Office Box 711
Monroe, Georgia 30655

And that this Affidavit is made in accordance with the Act of the Georgia Legislature approved in August 1929 and amended in March 1937, March 1943, March 1970 and April 1981.

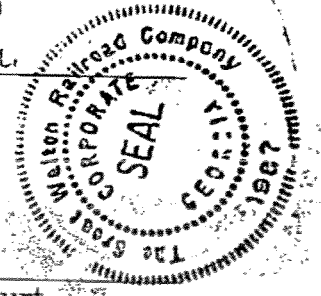
Sworn to and subscribed
before me this 15th day of
May, 1990.

Robert Willis
Notary Public
My Commission Expires:
11/18/90

[NOTARIAL SEAL]

THE GREAT WALTON RAILROAD
COMPANY

By: *B.R. Anderson Sr.*
B.R. Anderson, Sr.
Title: President



Clerk, Hart County Superior Court

Before the
SURFACE TRANSPORTATION BOARD

STB Docket AB No. 1242

Hartwell First United Methodist Church—Adverse Abandonment and
Discontinuance—Hartwell Railroad Company
and The Great Walton Railroad Company, Inc.,
in Hart County, GA

Verified Statement of Bennie Ray Anderson

1. My name is Bennie Ray Anderson. My business address is 1096 North Cherokee Road, Social Circle, GA 30025. I have personal knowledge of the facts stated herein and am duly authorized to present this Verified Statement on behalf of The Great Walton Railroad Company (GWRC), which owns and operates over the Line. I have carefully reviewed the Application for Adverse Abandonment filed by the Hartwell First United Methodist Church, Inc. (Applicant or Hartwell First) and will respond to various unsubstantiated claims and false statements that are contained in that document.¹ Because the abandonment of the approximately 0.25 miles of the line of railroad and associated right of way that is the subject of this adverse abandonment proceeding is not consistent with the public interest, GWRC strongly opposes

¹As a preliminary matter, GWRC's line of railroad runs from Station 0+00 at milepost 0.0 in Hartwell, Georgia to Station 508+32.8 at milepost 9.67 in Bowersville, Georgia. I assume that in 1990, prior counsel did not have access to the 1916 Valuation Maps of the Hartwell Railway Company from which GWRC acquired the line of railroad. As a result, prior counsel inadvertently reversed the milepost designations. Certified copies of the maps are filed herewith as GWRC Exhibits 1-4.

the application filed by Hartwell First. GWRC has never had any intent to abandon any of its tracks. To provide safe, economical and efficient service, GWRC needs to be able to use all of the tracks that are the subject of the application.

2. The need to retain the tracks identified in the Application for future railroad operations is directly related to the following circumstances. In 2016, Quality Holdings (Quality), which is a custom rotational molder whose facility is located less than a mile to the south and west of the segment of track that is at issue herein, advised me that its inbound shipments of raw materials would be substantially increasing. To provide service to Quality, which is also a customer of Norfolk Southern Railway (NS), GWRC must pull cars from the point of interchange with NS at Toccoa, Georgia, just past the switch at Quality's plant. Having cleared the switch, the cars are pushed onto Quality's spur for unloading. After cars are unloaded by Quality, GWRC has no choice but to push the cars all the way to Bowersville.

3. To satisfy Federal Railroad Administration (FRA) safety rules, GWRC has for the past year has been required to stop at all 45 crossings between that Quality's facility and the wye tracks at Bowersville. At each stop, the conductor or brakeman must dismount from the car and flag the crossing before the engineer could shove the empty car or cars across the intersection. After the train clears the crossing, the conductor has to climb back on the car and hang on to the grab bar on the side of the car until the next crossing. The constant stopping and starting causes the trip to the wye track at Bowersville

to take an hour and a half to two hours to complete. The movement in the opposite direction takes less than 30 minutes. Not only is this method of operating very time consuming, labor intensive and unduly expensive, it is unsafe. And in inclement weather, the person who is forced to hang on the side of the moving car is necessarily exposed to the elements. Plainly, the statement (Application at 13) that this method of operations is “satisfactory and safe” should be summarily rejected by the Board. In addition, the Board should disregard Applicant’s unsubstantiated claim at page 11 of its application that GWRC has been pushing the empty cars all the way to Bowersville “since at least 2009 when the Webb Street crossings were removed.”

4. When Quality advised me in 2016 that it anticipated an substantial increase in its need for rail service, I concluded that it would be necessary to restore the runaround track that was used to provide efficient rail service from 1919 to around 1996. Simply put, if I had to raise my rates to cover the higher operational costs caused by the inefficient method of operations, it would possibly force Quality to utilize trucks even though that would compel Quality to raise its prices. Furthermore, the use of trucks would also impact the efficiency of Quality’s operations.

5. I am also aware that restoration of the track may be useful in attracting additional traffic from previous customers, including Tenneco. The Tenneco facility is located between Quality and the runaround track that the Applicant is seeking to force us to abandon. When we previously provided service to Tenneco, we actively used the runaround track through 2007 to

reposition the locomotive for movements from Hartwell to Bowersville and beyond. I am aware that the Hartwell Railway Company used the runaround track for this same purpose for over seventy years before GWRC acquired all of Hartwell Railway's assets in 1990. The past usage of the runaround track plainly shows that it is an essential component of future rail service even if no shipper is currently located to the east of Webb Street. Without access to the runaround track, we would be compelled to continue the unsafe and unsuitable working conditions associated with the constant need to flag every crossing between Hartwell and Bowersville.

6. I am also aware that the City, which is in the process of attracting new business, has previously expressed its desire to keep the tracks open to downtown for future implementation of development. The Board should note that Germany-based Häring, a leading global manufacturer of precision components and subassemblies for the automotive industry, is in the process of locating its first U.S. manufacturing facility in Hart County. Because the existence of a line of railroad is often an attractive feature for new manufacturing facilities, the Board should deny the adverse abandonment application for the additional reason that it is not in the best interests of the overall community.

7. In order to preserve the tracks, I have routinely rejected the Applicant's repeated requests (since it acquired the property to the south of the tracks in 2007) that I should voluntarily agree to abandon the segment of tracks that now exists between portions of its expanded real property interests.

At the same time, I have tried to be a good corporate citizen by working with the City, Torch of Hartwell, Inc. and Applicant. As the record reflects, shortly after Applicant acquired the parcel of real property to the south of the tracks, I entered into two crossing agreements with Applicant that allowed it to cross over the tracks that have been in place for over a century. GWRC Exhibits 7 and 8. The mainline track was initially constructed in 1879, while the railroad's spur track, as it is described in an agreement dated June 26, 1919, between the Director General of Railroads and R. F. Clinkscales, was constructed at some point in time between 1907 and 1916. GWRC Exhibit 6. The crossing agreements with Applicant reflect the railroad's reservation of its "paramount right to continue to occupy, possess and use the area of the crossing for any and all railroad purposes."² I will emphasize that as part of the crossing agreements, respectively dated December 20, 2007 and August 1, 2008, Applicant contractually agreed to the explicit provision in ¶ 11 of both Agreements that it "*shall not at any time own or claim any right, title or interest in or to railroad's property occupied by Licensee's crossing, nor shall the exercise of this Agreement for any length of time give rise to any title to said property or any right or interest in Licensee other than the license created hereby.*" *Id.*

8. Given the explicit reservation of the "paramount right to continue to occupy, possess and use the area of the crossing for any and all railroad

² Certified copies of Agreements dated December 20, 2007, and August 1, 2008, are attached as GWRC Exhibits 6, 7, and 8.

purposes,” and the fact that Joe M. Whittemore signed the license agreements in his capacity as the Chair of Applicant’s Building Committee, the assertion at page 7 of the adverse abandonment application that the Railroad never gave Hartwell First any indication that it reserved the right to reinstall the north spur at some time in the future is false. Any steps that the Applicant took to expand its real estate holdings was done with full awareness of the existence of the tracks and my intent to preserve the tracks until there would be no current or future need for them.

9. Unbeknownst to me, Applicant had no intent to honor these agreements. As a review of the August 1, 2008 Agreement³ reflects, Applicant attached a copy of its Project 06067 “C100 Site Plan,” dated July 2007. We relied on the drawings that were provided by Hartwell First that showed that the tracks did not extend over the HFUMC property line. These drawing plainly reflect the locations of GWRC’s multiple tracks. Applicant did *not* disclose that even *before* it signed the December 2007 Agreement, it had already commissioned drawings that called for the “destruction and removal of the railroad tracks as part of its Project 06067.” These undisclosed drawings, also dated July 7, 2007, which were part of the Applicant’s Project 06067, reflect the following notes:

- **“CONTRACTOR TO REMOVE PIPES IF RAILROAD DEMOLITION CONTRACTOR DID NOT”** See GWRC Exhibit 12.

³ GWRC Exhibit 8.

- **“TRACKS TO BE DEMOLISHED BY OTHERS”** *See* GWRC Exhibit 13.
- **“STORMWATER PIPE TO REMAIN AFTER DEMOLITION OF TRACKS.”** *See* GWRC Exhibit 13.

Another plat involving Applicant’s construction of a new gymnasium to replace an existing gymnasium, dated October 3, 2007, reflects the statement that:

- **HARTWELL RAILROAD TO BE REMOVED.** *See* GWRC Exhibit 14.

Had I been aware of the undisclosed drawings that showed the tracks being removed at the time that the License Agreements were being negotiated, I would not have temporarily agreed to remove the spur track rails. Nor would I have allowed Hartwell First’s landscaper to cover the crossties and ballast with dirt.

10. Applicant, at page 7 of its reply to GWRC’s Petition for Reconsideration of Waiver of Filing Fees, has argued that it went forward with the acquisition of the yarn plant property on the south side of the tracks based on discussions it had with me in which I allegedly stated that I would allow Hartwell First to cross the right of way and tracks, and that I would eventually give the railroad’s interest in the property to Hartwell First. These statements are highly misleading. I was never advised by Applicant that it intended to purchase the yarn plant property. When I was later asked by Jack Edmonds if I would consider giving the real property to Hartwell First, I made it crystal clear that I would do so if I were to abandon the line, but that I had no plans to

do so. Furthermore, although Hartwell First claims that it went forward with the construction of a gymnasium and children's playground based on discussions with me, I note that the Hartwell First demolished an existing gymnasium when it expanded its other facilities that are located to the north of the tracks.

11. If I had been advised of Hartwell First's actual plans and intent, I would not have granted crossing licenses to it and, I would never had agreed to the temporary removal of any portion of the steel rails from the runaround track or the mainline that GWRC was not using at that time.

12. I must also disagree with the claim at page 7 of the application that I "took up and removed the north spur." The so-called "north spur," which has been an integral part of the runaround track since 1919, has never been taken up, removed or abandoned. Because I knew that heavier rails would have to be installed on the runaround track when and if a need arose to resume rail operations, only the steel rails were **temporarily** removed. The crossties and ballast were not disturbed and were left in place. During the recent effort to restore service that the Applicant interrupted based on the unsubstantiated claim that it owns the underlying real property, heavier steel rails were placed on the existing ties and on new ties that were required due to the deteriorated condition of existing ties that had been buried by the Applicant's landscaper. Had the Applicant not interfered with the ongoing effort to restore the tracks, the entire system would be in full operational condition today.

13. At all times, I have acted in good faith in agreeing to work with the City, the Georgia Department of Transportation, and Hartwell First. I have always fully disclosed that I have *no intent to abandon the tracks* and, if a future need developed, that I intend to resume rail operations over the tracks that are the subject of this proceeding. In addition to the licenses that were granted to Hartwell First, that intent is reflected in the letters that were forwarded to the City on April 6, 2009, and to the Department of Transportation on August 5, 2009. GWRC Exhibits 10 and 11. Although Hartwell First has referred to such letters as self-serving (Application at 7), they placed the City and the Department of Transportation on notice of my intent. In this regard, I request that the Board make it clear to all concerned that any further effort to prevent the reinstallation of the tracks across Webb Street would violate its primary jurisdiction, and request the Attorney General to take immediate action to enforce its order.

14. At page 8 of its adverse abandonment application, Hartwell First claims that “[t]he Line Segment clearly is not currently in a condition that can support rail operations at any level.” To support this claim, Hartwell First has submitted a series of photographs that claim to reflect the current condition of the tracks. See Applicant’s Appendix 10. As is explained in the accompanying Verified Statement of Joseph Dorsey, GWRC’s General Manager, Hartwell First’s photographs are very deceptive and even include multiple photographs of tracks that are not at issue herein, including photos of a spur that leads to a historically significant turntable to the west of Chandler Street, and the stub

end of an industry spur that parallels the mainline and runaround track to the east of Webb Street. To demonstrate the misleading nature of Applicant's photographs and arguments, photographs of the relevant tracks that reflect the true current condition of the tracks are attached to the accompanying Verified Statement of Joseph Dorsey.

15. I am aware and agree that the rehabilitation work that was started in November 2016 must be finalized before operations can be resumed over the mainline and runaround tracks. However, a vast majority of the work is cosmetic and has already been addressed by the removal of vegetation and dead leaves. Contrary to Hartwell First's assertions at page 17 of its application, no trees are growing in the right-of-way. It will, of course, be necessary to restore the at-grade crossing over Webb Street, which is also known as State Route 172, and remove some more of the gravel at the Chandler Street crossing. GWRC has already notified the City and other state officials that because it intends to use the tracks in the immediate future, the pavement must be removed so that the tracks can be fully rehabilitated. As I have previously testified, if Hartwell First had not interfered with ongoing efforts to rehabilitate the tracks, GWRC would have resumed operations over the tracks at the beginning of the year. The injunction of the state court is the only reason why the needed work has not yet been completed.

16. Hartwell First has wholly misconstrued the Lease Agreement with TORCH of Hartwell, Inc. (TORCH). By way of background, the historic Hartwell rail depot is located at the eastern-most end of the segment of track that

Hartwell First seeks adverse authority to abandon. That segment of track does not physically adjoin the Church's properties, which are located to the west of South Webb Street. To facilitate the revitalization of the depot area, which is located between South Webb and South Forest Avenue and includes buildings owned by Hartwell Railroad Company, as well as railroad right-of-way owned by GWRC, I entered into a Lease Agreement with TORCH in July 2015 to help facilitate the rehabilitation of this historic portion of downtown Hartwell.

17. While I support TORCH's efforts to use much of the land to create a park area, *there is nothing in the TORCH agreement that remotely indicates that I have ever intended to abandon the tracks that are located on the involved property.* I am aware that GWRC's ability to satisfy its common carrier obligations is contingent on its ability to continue to use the runaround track as described above.

18. Because I am not an attorney, I will leave it to counsel to respond to the misleading legal arguments that have been made by Applicant, including the assertion at page 9 of Applicant's Reply, filed May 2, 2017, that GWRC "no longer has any rights under the license [agreements reached with Applicant in 2007 and 2008] (having assigned it to TORCH under the lease)." However, I am not aware of any provision in the TORCH agreement that negates any of GWRC's rights under the license agreements that were previously granted to Applicant. Furthermore, the TORCH agreement specifically acknowledges that certain portion of the Premises "are subject to licenses in favor of Hartwell First United Methodist Church" and that such licenses are specifically set forth at

Section 7.6(b)(1), (2) and (3). In addition, Section 7.6(b) further provides among other things that TORCH's "rights to use and occupancy of the Church License Areas are subordinate and subject to the right of Hartwell First United Methodist to use and occupy the Church License Areas."

19. I will also note that even though Section 5.1 of the TORCH agreement provides that "Lessee shall be permitted temporarily to remove any and all rails in the block between Forest Avenue and Webb Street," that does not provide TORCH with any authority to permanently remove any track. As stated at Section 4.1, TORCH is not allowed to use the Premises "in a manner not permitted by applicable law," which would include the Interstate Commerce Act. Also, while Section 5.1 provides that TORCH is not obligated "to reinstall the rails in such a manner and to such specifications that the rails are able to support rail traffic," that does not relieve GWRC from the requirement that it would have to bring the tracks up to applicable FRA standards before resuming rail operations over such tracks. Given the likely need to replace lighter rails with heavier ones, it would have been unreasonable for me to demand that TORCH assume the responsibility and cost to do so. Those same considerations apply to Section 8.1, which provides that while TORCH is required to keep the Premises in a good and safe condition, it does not obligate TORCH "to make any alterations or additions to the Leased Premises." As defined at Section 1.1, the term "Leased Premises" includes buildings and other property.

20. In sum, it is my position that contrary to Hartwell First's claim at p. 8, nothing in the TORCH agreement "serves as a clear signal that the Railroad had no plans or expectations of resuming commercial operations on the track." Furthermore, the TORCH agreement does not indicate "by its terms that the Railroad has voluntarily surrendered the right and ability to conduct any rail operations on or over the Line Segment, either now or for the 99-year term of the lease" as Harwell First suggests at p. 9 of its application. In addition, there is nothing in the TORCH agreement that in any manner prevents GWRC from resuming rail operations over any of the tracks that are located on the real property that is subject to that agreement. Last, the TORCH agreement does not give TORCH any ability or authority to abandon the tracks without authority from the Board.

21. The Board is asked to note that the Federal Appalachian Regional Commission recently awarded a \$150,000 grant to TORCH for the Railroad Street Park Project. It is hoped that the revitalization of the depot area will promote tourism and benefit the Hartwell community at large in other respects. Although nothing has been finalized, the Board should be aware that some consideration has been given to an excursion train that would allow tourists to use the old depot to board the train, which would travel along GWRC's tracks to Bowersville, and then return to the depot. This is another reason that I have resisted Hartwell First's demands that I agree to voluntarily abandon the tracks. The Board should also note Hartwell First's concession that the Georgia

State Historic Preservation Officer is aware of the historic significance of this line of railroad and has raised concerns regarding the removal of the tracks.

22. I also disagree with Hartwell First's suggestion at page 14 that "[w]hile no railroad engineering studies have been done, it would appear that the Railroad could either construct an additional track at Quality to create a 'we' or it could construct a runaround track within its existing 100 foot right of way somewhere between Quality and Leard Street to the east, or between the trestle that is west of Quality and Bowersville, that would be closer to quality, and would not involve the installation of any road crossings." Based on my personal knowledge, there is no place between Quality and Leard Street on which a functioning we track or a runaround track could be constructed. I must also note that I am not aware of a trestle that is west of Bowersville. Furthermore, no "installation of any road crossing" is involved in this matter. Because the tracks have been in existence since 1879, it is only a matter of restoring them at a minimal cost. Second, revenues that GWRC will derive from the relatively small amount of traffic involved herein would not support the expenditure of funds required to build a new we or the construction of a new runaround track, much less the purchase of additional land. Third, GWRC did not ask the Church to spend \$3 million to purchase property on the south side of its existing tracks. While Hartwell First complains that the existing tracks "bisects the private property of the Church,"⁴ it cannot deny that it has

⁴ Application at 18.

known of the tracks existence from early in the twentieth century.

Nevertheless, it chose to purchase the adjacent property. While Hartwell First now views the existing tracks as a major irritant, that is not a reason to compel a small shortline railroad to launch an extensive construction project that cannot be justified from a financial standpoint.

23. Hartwell First's claims that GWRC does not own the real property and tracks at issue herein, and does not hold authority to operate over them, are shocking. GWRC has been operating over the tracks since 1990. No one, including Hartwell Railway, the ICC and the Board, has ever raised any questions in this regard. By way of background, on March 14, 1990, Troutman Sanders filed a notice of exemption pursuant to 49 CFR §§ 1180.2(d) and (d)(7), 1180.4(g) and 1180.6. It is my understanding based on old NSR billing records that John Molm, who is now deceased, personally met with Joe Dettmar, a key member of the ICC's Office of Proceedings, two days before he filed the joint notice of exemption. After he filed the dual notice of exemption, he immediately responded to requests from other ICC staff members for additional information by providing the requested certification and other information to them. It is my further understanding that the ICC's regulations at the time permitted the filing of related proceedings and that only one fee was required, which fee was duly paid. It is my further understanding that to qualify for an exemption under 1180.2(d), the railroad had to file a verified notice of the transaction with the ICC at least one week before the transaction was consummated, which was done. Prior to this proceeding, no one has ever questioned the validity of

the transactions and GWRC's right to own and operate all of the assets that were acquired from the owners of Hartwell Railway Company. Such assets included the rail line owned and operated between Bowersville and Hartwell, which included any and all tracks, rails, ties, switches, crossings, bridges, trestles, culvers, buildings, signals, crossing protection devices, communication lines and poles that were affixed to the land between above-described points on the date of the Assets Purchase Agreement. As a result, I cannot understand why the ICC may have failed to publish more than one decision in Finance Docket No. 31626, which clearly encompassed both the asset purchase and the trackage rights matters in that docket.

24. To discover what may have happened, I have requested Troutman Sanders to release all files in its possession that relate to this matter. Unfortunately, Troutman Sanders, after repeated searches, has notified GWRC's counsel that it cannot locate Mr. Molm's files that could perhaps shed some light on this matter. Furthermore, counsel for the Hartwell Railway has confirmed that he disposed of his old files several years ago. And there is nothing in the ICC's file that provides an explanation.

25. Although Hartwell First claims ownership of the parcel of land on which a segment of the runaround track is located, its claim is based on quit claim deeds that assume the prior owner owned all the real property it conveyed to Hartwell First, measured to the centerline of Hartwell Railway's main line of the track. Based on the sketch of the property prepared by the Southern Railway in 1919 that shows property boundaries that have never

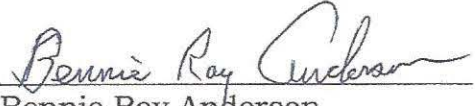
before been contested, as well as the wording of that Agreement, which notes that the "258-foot spur track" was owned by the Railroad, I must question Hartwell First's claim that it holds any title to the small parcel of real estate upon which the runaround track rests that is beyond the original 1879 right-of-way of the original Hartwell Railway Company. To resolve the matter in an expeditious manner, counsel has commenced a condemnation proceeding in Georgia.

26. So that GWRC can reactivate the entire system of tracks that it acquired over 27 years ago, I request the Board to give this matter expedited consideration and to deny the application for adverse abandonment of the tracks in question consistent with the provisions of the national rail transportation policy.

VERIFICATION

I, Bennie Ray Anderson, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 27th day of May, 2017.


Bennie Ray Anderson

Before the
SURFACE TRANSPORTATION BOARD

STB Docket AB No. 1242

Hartwell First United Methodist Church—Adverse Abandonment and
Discontinuance—Hartwell Railroad Company
and The Great Walton Railroad Company, Inc.,
in Hart County, GA

Verified Statement of Joseph Dorsey

1. My name is Joseph Dorsey. I am Vice President and General Manager of The Great Walton Railroad. My business address is 5245 Bowersville Hwy, Bowersville, GA 30516. I have personal knowledge of the facts stated herein and am duly authorized to present this Verified Statement on behalf of The Great Walton Railroad Company (GWRC), which owns and operates over the Line. I have carefully reviewed the Application for Adverse Abandonment filed by the Hartwell First United Methodist Church, Inc. (Hartwell First) and will respond to various unsubstantiated claims and false statements that are contained in that document.

2. Over the past months, I have spent many hours reviewing deeds and records in the Hart County Clerk of Court's Office attempting to locate a deed that would support Hartwell First's claim to own the real property on which the former 258-foot spur was constructed prior to 1916. As of this date, I have not been able to locate any record to support Hartwell First's claims that it holds title to that real property. Although I have not yet been able to find a

deed that reflects a conveyance of title to the railroad that would cover the former spur track that springs in a northly direction from GWRC's main line and extends to the east a distance of 258 feet, I have, however, located the original copy of the June 28, 1919 Agreement between the Director General of Railroads, by E. H. Coapman, Federal Manager, Hartwell Railroad, and R. F. Clinkscales, and the August 5, 1922 Memorandum of Agreement that extended the 1919 Agreement. GWRC Exhibit 6. The 1919 Agreement explicitly states that the 258-foot spur shown on the June 30, 1916 Valuation Map of the Hartwell Railway was the Railroad's property. That spur was extended across Webb Street pursuant to the 1919 Agreement and connected with a spur on the east side of Webb Street to create a runaround track that allowed the operating railroad to move its locomotive from the front of an inbound train to the other end of the train for the return trip to Bowersville, GA. Because the mainline track begins at milepost 0.0 in downtown Hartwell, the ability to utilize the runaround track to reverse the position of the locomotive was crucial as it allowed the locomotive to pull trains moving in each direction.

3. I have carefully reviewed the photographs in Hartwell First's Appendix 10, as well as those that were included in the Environmental and Historic Report filed with the Board on November 15, 2016. According to Hartwell First, its photographs show that GWRC's track "is not currently in a condition that can support rail operations at any level." Application at 8. In addition, Hartwell First also claims that "the pictures attached hereto as Appendix 10, and those attached to the EHR, show that the right of way is

overgrown, has trees growing in the right of way, has obstructed views at the Athens Street crossing, and that the tracks have been removed from Webb Street.” Application at 17.

4. It is true that the rails have been temporarily removed from GWRC’s mainline and runaround tracks over Webb Street. However, the tracks have not been abandoned. Nor does GWRC have any intent to abandon them. Instead, GWRC intends to reinstall its rails and complete the rehabilitation of the runaround track as soon as possible. The only impediment is the Emergency Order that was issued by the Superior Court of Hart County on Monday, November 28, 2016. That Order, which has prevented GWRC from finalizing the restoration of the two tracks that have crossed over Webb Street since 1919, is the only reason that the tracks have not been restored.

5. I am attaching photographs that, with three exceptions, were taken on May 25, 2017. These photographs, which reflect the current situation, contradict Hartwell First’s claims. These photographs start near the eastern most section of GWRC’s mainline track looking east to the intersection at Jackson Street with the track leading to the loading platform and Hartwell Deport shown on the left side of the photograph (Photograph 0). This particular segment of track has nothing to do with Hartwell First’s real property. Only GWRC Photograph 24, taken May 7, 2017, faces to the east.

6. The remaining photographs all face in a westerly direction. They start with the intersection of GWRC’s mainline with Jackson Street (Photo 1)

and continue to the intersection with Athens Street on the west. (Photo 24). In particular, GWRC's Photographs 19 through 24 reflect the same segments of the mainline track that appear in the first three photographs in Hartwell First's Appendix 10. As is plainly evident, there are no trees growing in the right of way, nor are the tracks over grown. Whereas the view of a westbound train is partially obstructed, which will require GWRC to comply with FRA safety standards and the removal of some vegetation that currently protrudes over the right-of-way, the view of an eastbound train is totally unobstructed.

7. Today, gravel that was placed at the intersection of GWRC's mainline and Chandler Street is the only obstacle, after a few new crossties are inserted, that might prevent a locomotive from operating safely between points west of Athens Street and Webb Street. It would take a matter of minutes to remove the gravel from around the mainline and turntable spur tracks. See GWRC Photograph 11.

8. I must also take issue with the misleading nature of Hartwell First's photograph in Appendix 10 that is labeled "Condition of the track looking west from Bank Ave." That photograph reflects GWRC's turntable spur track that is not at issue herein. I am aware that in its EHR, Hartwell First properly noted that the track in its photograph 11 was a distinct spur. However, contrary to the label applied to that photograph, the culvert does not go under the "adjacent Subject Line." Instead, as GWRC Photograph 13a shows, the culvert runs parallel to the mainline track. To clarify the situation, the turntable track heads in a northwesterly direction from GWRC's mainline

at a point that is approximately 44 feet to the east of Chandler Street to an historically significant turntable. The turntable is located to the north of the mainline track. The turntable spur track and the turntable itself are located on two parcels of land that Hartwell Railway acquired in 1905. The difference between the turntable spur and GWRC's mainline is plainly shown in GWRC's Photographs 10 through 14.

As noted above, although a portion of the mainline and turntable spur tracks have been covered with gravel, as shown in Hartwell First's photograph labeled "Main line looking east from Bank Ave", and in GWRC's Photograph 11, the tracks are in place and, with a minimal removal of the gravel and insertion of additional cross ties, are capable of handling commercial operations. As an aside, "Bank Avenue" is a recent name that has been applied to "Chandler Street," which is used in all of the deeds that I have examined that apply to the real property involved in this matter.

9. The Board should also note that in Hartwell First's photograph, the old passenger car and caboose are located at a point that is further west than the current location. The difference in location reflects the fact that the cars were moved in the interim between when Hartwell First took its photographs and April 25, 2017 when GWRC's photographs were taken.

10. The washout under the turntable spur track, which is reflected in Hartwell First's photograph and in GWRC's Photograph 13, was caused by a drainage system that is not owned or maintained by the railroad that will need

to be repaired to prevent further erosion. The washout does not impact GWRC's mainline track.

11. The 258-foot spur that is reflected on Hartwell Railway's Valuation Map extends from a point that is approximately 17 feet from the point that the turntable spur terminates. The eastbound spur extends approximately 83 feet before it extends beyond Hartwell Railway's original right-of-way. From that point, the original spur extended another 165 to the end of the original spur. At no point, does the spur extend more than five feet beyond the original right of way. Because deeds that defined the Farmers Union Lot reflect a variance of up to 14 feet in the footage of that lot between the Hartwell tracks and the lot to the north of the Farmers Union Lot (100 feet in 1907 to "about 86 feet" in 1920 and 90 feet in 1922 and at all times thereafter, it appears that the 10 foot differential can only be explained by an unrecorded deed that served to expand the railroad's property an additional 10 feet to the north of the original right-of-way. If that ultimately proves to be case, that parcel would not be included in the real property that Hartwell First is claiming to own.

12. Hartwell First has also included several photographs of tracks that are located to the east of Webb Street. Those photographs should be compared with GWRC's Photographs 1 through 4, which reflect GWRC's mainline and runaround tracks. These photographs plainly contradict Hartwell First's position. In particular, the Board should note that Hartwell First's photograph labeled "Condition of tracks at Webb Street looking West" focuses on a track

that is the stub end of an industrial spur that has absolutely nothing to do with GWRC's mainline or runaround tracks.

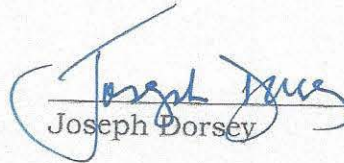
13. I was personally involved in the effort to restore the segment of the runaround track that is located to the south of the Hartwell First's church and driveway. As evidenced by GWRC's photographs 25 and 26, which I personally took at 3:16 p.m. and 3:17 p.m. on November 23, 2016, during the process of restoring the runaround track, the old crossties and ballast were still in place. Most importantly, at no point did GWRC's operations cause it to move beyond the location where the original tracks had been placed over a hundred years ago. As GWRC's Photographs 1 through 4 show, the tracks on the east side of Webb Street have remained in place and are capable of being operated over today with a minimal amount of work. Although GWRC has been prevented from completing the alignment process and reuniting the segments of the mainline and the runaround tracks, it is plainly evident that the joinder of the tracks will restore the tracks to the same alignment was constructed following the 1919 Agreement between the United States Railroad Administration's Director General of Railroads and the Hartwell Railroad. A true copy of the Agreement and accompanying sketch prepared by Southern Railway's Office of Resident Engineer, Eastern District is found at GWRC Exhibit 6. In addition, a true copy of the blue print sketch is attached to my statement as Attachment 2. Unlike the copy that is attached to Hartwell First's application as Appendix 2, entitled Clinkscapes Agreement, the blueprint copy allows a reader to view the various notations thereon.

14. I am serving my 17th year as the Hart County Commissioner District 5. I am also the current Chairman of the Hart County Board of Commissioners. By virtue of being the current Chairman, I am also a current member of Hart County Industrial Building Authority, which is charged with bringing industry into the County. Although I am not authorized to state an official position in this proceeding for other than GWRC, the County is always looking for ways to attract new businesses and employment to the County. I am also aware that Quality Holdings has advised GWRC that it intends to expand its business even further in the future. Because the adverse abandonment of a segment of GWRC's tracks would adversely impact GWRC's ability to provide service to Quality, the overall public interest in promoting growth in Hart County would not be served.

VERIFICATION

I, Joseph Dorsey, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 30th day of May, 2017.


Joseph Dorsey

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1242

Hartwell First United Methodist Church—Adverse Abandonment and
Discontinuance—Hartwell Railroad Company
and The Great Walton Railroad Company, Inc.,
in Hart County, GA

Verified Statement of Jonathan Talbot Colehower

1. My name is Jonathan Talbot Colehower. I am the President and CEO of Quality Holdings, LLC. (Quality). My business address is 300 Fisher Dr., Hartwell, Georgia. I have personal knowledge of the facts stated herein and am duly authorized to present this Verified Statement on behalf of Quality in support of The Great Walton Railroad Company (Great Walton). I am aware that the Hartwell First United Methodist Church (Hartwell First) has filed an application with the Surface Transportation Board seeking to compel the abandonment of the segment of Great Walton's line of railroad between Athens Street and the end of the line at South Forest Street, in Hartwell, Georgia. Because abandonment of that segment of Great Walton's line will adversely impact Quality and its plans to expand its business in the future, Quality opposes Hartwell First's application.

2. After graduating from business school at Vanderbilt, I spent about eight years in management consulting at Accenture. I then spent the next five years with Oracle, where I was involved with supply chain and manufacturing.

Thereafter, I was the CEO of a software company in Boston until I joined McKinsey & Co.. Before being hired in 2016 to run Quality's business in Hartwell, I was employed as the chief marketing officer for Manhattan Associates in Atlanta, Georgia.

3. Quality, which operates a 131,449 square-foot manufacturing plant and currently employs approximately 100 employees in Hartwell, is the premier manufacturer of plastics in the southeast part of the country. Quality is engaged in the plastics business and manufactures a very diverse series of large and small plastic items from raw materials (plastic pellets) that come into its plant by rail. Each hopper car will contain 200,000 pounds of the raw material used in Quality's manufacturing process. About eighty (80) percent of Quality's raw materials consists of a polyethylene substance called LLDPE. The raw material is in the form of pellets which, after being unloaded from the rail hopper cars in which they are shipped, are pulverized into a powder. After being colored, the powder is put into a cast aluminum mold that rotates in a large oven. While the product is being rotated, the polyethylene melts and covers the inside of the mold and is cooked for around 15 minutes. After the mold is cooled, the product is removed from the mold.

4. If Quality were forced to utilize truck service, its basic cost of raw materials would increase from 72 cents to 82 cents per pound. This does not include any consideration of additional material handling costs. From an overall logistics standpoint, receiving raw materials by rail car is straight forward. When the rail car arrives, a tube is connected underneath it and the

pellets are pulled into the plant through a vacuum directly into the top of the pulverizer. If forced to utilize trucks, Quality would have to figure a way to unload the material, move it to the pulverizer and then somehow get it up into a gravity feed or some other way to get it to the top of the pulverizer. This would entail business process changes that would substantially increase operating costs. The bottom line is that price is a huge factor for our customers. There can be no doubt that our ability to take advantage of rail service, which features direct delivery over our spur track to our facility, contributes to Quality's financial successes.

5. Because I firmly believe that reliable and economical rail service is essential to the long- term expansion of Quality's business, I have worked closely with Great Walton over the past two years. Recognizing that rail service had not been employed to any great extent by prior ownership, I proactively took steps to ensure that Quality would receive reliable and economic rail service. This included providing funds to assist Great Walton with track improvements.

6. I am aware from conversations with Great Walton's management that it must reduce its operating costs if it is to continue providing rail service to Quality. As has been explained to me, it is currently unable to make use of the runaround tracks that it owns in Hartwell due to the emergency injunction issued by a local state judge that has prevented it from rehabilitating and restoring its tracks. As a result, it has no choice, after pulling the empty cars from Quality's spur, but to push the empty cars from Quality's facility to

Bowersville, a distance of approximately 9 miles. This increases the time needed to travel that short distance from about 30 minutes on an inbound movement to Quality, to as much as 2 hours to return them to Bowersville. I am advised that if Great Walton were able to use its runaround track that is the subject of this adverse abandonment application, it would be able to reposition its locomotives at the head of its trains for the movement back to Bowersville and eliminate the need to flag at the intervening 45 public and private road crossing. I am also aware that its current operating practice requires an employee to hang on the side of the moving train and hop off the train at each intersection in all types of weather. In my opinion, that is not the safest way to conduct operations.

7. At present, Quality receives only a limited number of carloads of raw material a year. In 2016, after I focused on the need to shift to rail service, we received 21 cars. I forecast that this will increase to 25 cars per year in 2017. Moreover, I am currently looking at two new opportunities that would increase Quality's dependence on rail service. One involves a rotational molding company that is located in Toccoa, Georgia. That company has asked if we could pulverize about a million pounds a year for them.

8. To demonstrate the importance of rail service, in 2016, Quality's top line revenue was up by 20 percent and the EBITA (earnings before taxes and interest) was up 40 percent. In 2016, Quality was a \$10 million business. My forecast for 2017 is that Quality will reach somewhere around \$12 million. If we were to lose rail service or if Great Walton were forced to raise its rates to

cover an increase in operating costs incurred by the abandonment of its tracks, it would clearly impact Quality. Because Quality's future growth is dependent upon its ability to utilize rail service, rather than trucks, I respectfully request the Board to deny the application for adverse abandonment filed by Hartwell First United Methodist Church.

VERIFICATION

I, Jonathan Talbot Colehower, President and Chief Executive Officer of Quality Holdings, LLC, verify under penalty of perjury under the laws of the United States that the facts recited in the foregoing statement are true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to cause this Verified Statement to be filed.

Jonathan Colehower

Name: Jonathan Talbot Colehower
President and CEO of
Quality Holdings, LLC

Date: May 22, 2017

Docket No. AB 1242
THE GREAT WALTON RAILROAD COMPANY, INC.
LIST OF EXHIBITS IN SUPPORT OF OPPOSITION TO
ADVERSE ABANDONMENT APPLICATION

- Exhibits 1 through 4: June 30, 1916 Valuation Maps of the Hartwell Railway Company
- Exhibit 5: Map of Lines of Railroad and Streets in Hartwell, GA
- Exhibit 6: Agreement between Director General of Railroads, by E. H. Coapman, Federal Manage, Hartwell Railroad and R. F. Clinkscales, dated June 28, 1919 and Memorandum of Agreement, dated August 5, 1922, extending original Agreement
- Exhibit 7: Crossing Agreement, dated December 20, 2007, between Hartwell First United Methodist Church and Harwell Railroad Company
- Exhibit 8: Crossing Agreement, dated August 1, 2008, between Hartwell First United Methodist Church and Harwell Railroad Company
- Exhibit 9: Sewer Agreement, dated August 1, 2008, between Hartwell First United Methodist Church and Harwell Railroad Company
- Exhibit 10: Letter to David Aldrich, City Manager, Hartwell, GA, from Dave Bishop, dated April 6, 2009
- Exhibit 11: Letter to Todd Wood, Area Engineer, Georgia Department of Transportation, from Dave Bishop, dated August 5, 2009
- Exhibit 12: Hartwell First United Methodist Church, Site Plan C100, dated July 2007
- Exhibit 13: Hartwell First United Methodist Church, Existing Conditions and Demotion Plan V-100, dated July 2007
- Exhibit 14: Hartwell First United Methodist Church, New Gymnasium Plan, dated 10/10/07
- Exhibit 15: Interstate Commerce Commission regulations effective in March 1990
- Exhibit 16: Great Walton Railroad Company, Notice of Exemption filed March 14, 1990, pursuant to 49 C.F.R. §§ 1180.2(d)(2) and (d)(7), 1180.4(g) and 1180.6, with supplemental letters and Federal

Register Notice filed April 6, 1990 pertaining to Notice of Exemption

- Exhibit 17: Certified Transcript of Testimony of Jonathan Talbot Colehower Before the U.S. District Court for the Middle District of Georgia
- Exhibit 18: News Article from the Hartwell Sun, dated September 20, 2016, Entitled *Quality Holdings: A best kept secret in Hartwell*
- Exhibit 19: Article published by Historic Resources of Hartwell, Hart County, Georgia with abbreviated biography of C. I. Kidd
- Exhibit 20: Lease Agreement With Option between Hartwell Railroad Company and The Great Walton Railroad Company as Lessor and TORCH of Hartwell, Inc. as Lessee
- Exhibit 21: Photographs 0 – 26 reflecting current conditions of Great Walton lines of railroad that are the subject of the adverse abandonment application

AB 1242

GWRC EXHIBIT 1

HARTWELL, GA.

NO.	NAME	DATE	REMARKS	STATION	STATION	STATION	STATION	STATION	STATION
1	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
2	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
3	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
4	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
5	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
6	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
7	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
8	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
9	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
10	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100

NO.	NAME	DATE	REMARKS	STATION	STATION	STATION	STATION	STATION	STATION
1	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
2	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
3	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
4	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
5	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
6	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
7	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
8	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
9	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100
10	W. H. HARRIS	10-1-10	100	100	100	100	100	100	100

HARTWELL, GA.

RIGHT-OF-WAY AND TRACK MAP
HARTWELL RAILWAY COMPANY
OPERATED BY THE
HARTWELL RAILWAY COMPANY

STATION 0+00 TO STATION 21+00

SCALE 1" = 400' H.W. 100' 100'

OFFICE OF SPECIAL ENGINEER
WASHINGTON, D.C.

H.W. 1

AB 1242

GWRC EXHIBIT 2

HART COUNTY, GA.

AIR LINE, GA.



STATION	NAME	DATE	REMARKS	DATE	REMARKS	DATE	REMARKS
1	W. H. Smith	7-25-78	111	8-10-80	3-13	100 AC.	
2	W. H. Smith	8-1-81	2	8-1-81	4-15		
3	W. H. Smith	8-1-81	5	8-1-81	3-18		
4	W. H. Smith	8-1-81	2	8-1-81	3-17		
5	W. H. Smith	8-1-81	2	8-1-81	3-18		
6	W. H. Smith	8-1-81	2	8-1-81	3-17		
7	W. H. Smith	8-1-81	2	8-1-81	3-17		
8	W. H. Smith	8-1-81	2	8-1-81	3-17		
9	W. H. Smith	8-1-81	2	8-1-81	3-17		
10	W. H. Smith	8-1-81	2	8-1-81	3-17		
11	W. H. Smith	8-1-81	2	8-1-81	3-17		
12	W. H. Smith	8-1-81	2	8-1-81	3-17		
13	W. H. Smith	8-1-81	2	8-1-81	3-17		
14	W. H. Smith	8-1-81	2	8-1-81	3-17		
15	W. H. Smith	8-1-81	2	8-1-81	3-17		
16	W. H. Smith	8-1-81	2	8-1-81	3-17		
17	W. H. Smith	8-1-81	2	8-1-81	3-17		
18	W. H. Smith	8-1-81	2	8-1-81	3-17		
19	W. H. Smith	8-1-81	2	8-1-81	3-17		
20	W. H. Smith	8-1-81	2	8-1-81	3-17		

RIGHT-OF-WAY AND TRACK MAP

HARTWELL RAILWAY COMPANY

OPERATED BY THE

HARTWELL RAILWAY COMPANY

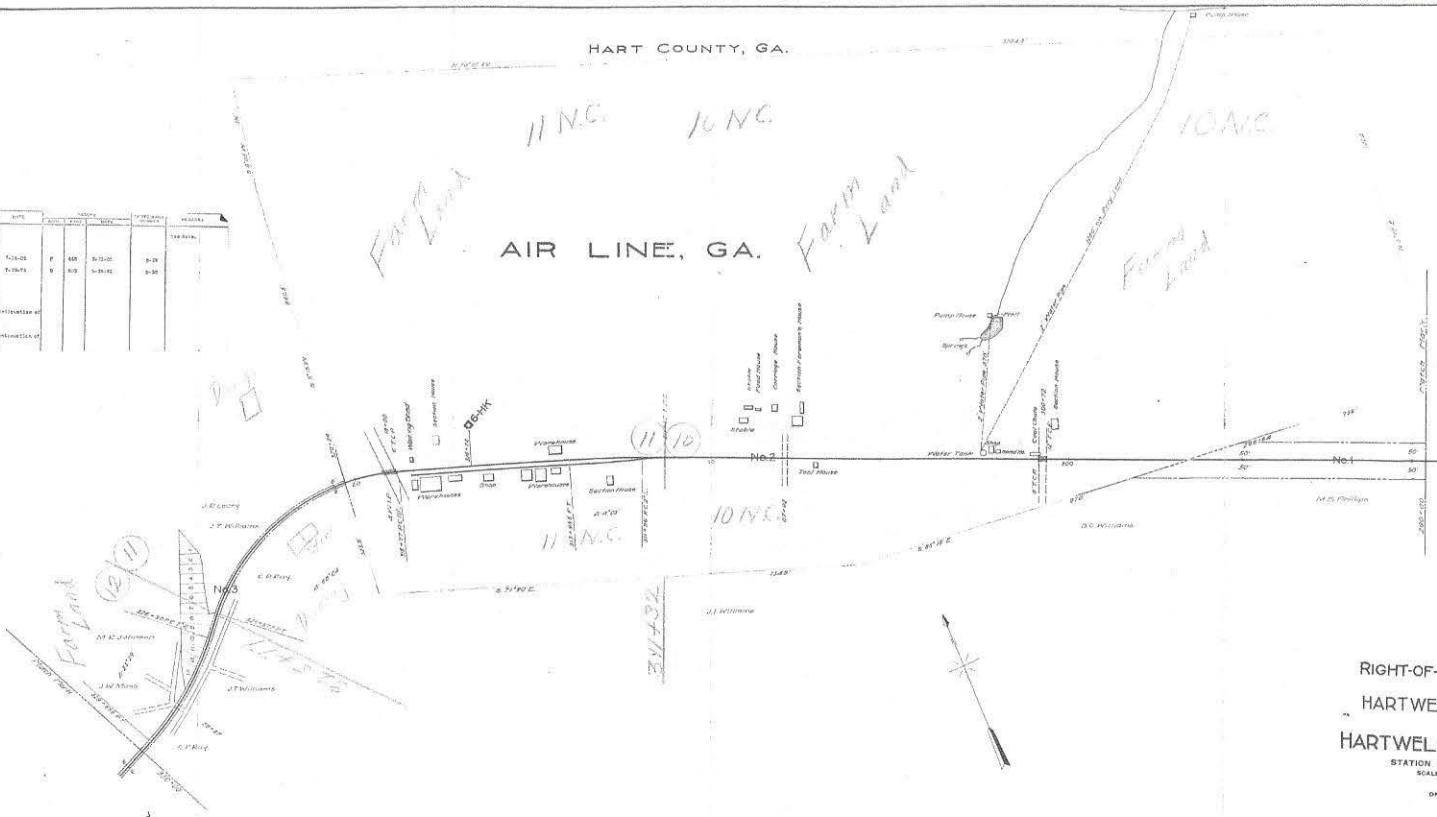
STATION 211+25 TO STATION 422+42
SCALE 1 IN. = 200 FT. JUNE 20th 1915

OFFICE OF SPECIAL ENGINEER
WASHINGTON, D.C.

H.R.
2

AB 1242

GWRC EXHIBIT 3

[illegible]

RIGHT-OF-WAY AND TRACK MAP
HARTWELL RAILWAY COMPANY
OPERATED BY THE
HARTWELL RAILWAY COMPANY
STATION 290+00 TO STATION 330+00
SCALE 1"=100 FT. JUNE 20TH 1910
OFFICE OF SPECIAL ENGINEER
WASHINGTON, D. C.

AB 1242

GWRC EXHIBIT 4

AB 1242

GWRC EXHIBIT 5



AB 1242

GWRC EXHIBIT 6

Washington, D. C., August 26, 1928.
1928-29.

Alvair R. Co.

Agreement June 22, 1919, between Director General of Railroads
and R. L. Clinkscale, Industrial Truck, Bartwell, Ga., which
expired at end of Federal control.

Messrs. Abernethy
Morrey
Adams
Bollard (K)
Butt
Dugan
Horse
Jones (JR)

Continued in force by agreement dated August 9, 1928,
between the Railway Company and R. L. Clinkscale, under same terms
and conditions.

G. E. H.

*Reinforced
Agreement*

AN AGREEMENT, made and entered into this 25th day of June, 1919, by and between

DIRECTOR GENERAL OF RAILROADS, by E. H. Cozman, Federal Manager, Hartwell Railroad, hereinafter for convenience styled the Railroad, party of the first part, and
E. P. CLINKSCALES, of Hartwell, in the State of Georgia, party of the second part;

W I T N E S S E T H:

THAT the RAILROAD, for and in consideration of the covenants of the party of the second part, hereinafter expressed, hereby agrees:

1. That it will lay and construct an extension of 356 feet to the easterly end of that certain existing spur track of the Railroad, 258 feet in length, at HARTWELL, in the County of Hart and State of Georgia, which springs from the main track of the Railroad, at a point thereon 4178 feet east of Milepost 1, and extends and with the said proposed 356 foot extension thereof will extend thence in an easterly direction for a distance of 614 feet, more or less; and will thereafter, during the life of this agreement, operate the entire track as extended, for the purpose of affording unto the party of the second part facilities for the shipment of his freights in carload quantities, over the lines of the Railroad and its connections; ALL being substantially as shown upon the blue-print map of survey, dated February 19, 1919, revised March 10th and April 22nd, 1919, hereto annexed and made a part of this agreement.

AND the PARTY OF THE SECOND PART hereby covenants and agrees, in consideration of the advantage to be by him derived from the construction of said extension and the operation of said industrial track as extended:

2. That the Railroad shall not be obligated to provide or furnish any right of way necessary for the said extension proposed to be constructed hereunder, but the party of the second part hereby specifically guarantees to the Railroad the right to construct, and operate with its engines and cars, the said extension or any portion thereof, extending beyond the present right of way limits of the Railroad, as the same has been located by survey and indicated on said attached blue-print map; the party of the second part

hereby agreeing that he will obtain from the proper municipal authorities of said Hartwell, such grant or ordinance as may be necessary and required, in the judgment of the Railroad, to enable the Railroad to construct and operate the said extension across Webb Street, as shown on said attached blue-print.

3. That he will, as a condition precedent to any obligation on the part of the Railroad to begin the construction of said extension, provide and furnish on the ground all such first-class cross-ties as may be necessary and required by the Railroad for the construction of said extension; and will, moreover, advance and pay to the Railroad, upon demand, the sum of SIX HUNDRED TEN AND 50/100 DOLLARS (\$610.50); said sum being the estimated cost of said extension, exclusive of the cross-ties furnished by the party of the second part as aforesaid; PROVIDED, however, if the actual cost of said extension, exclusive of the cross-ties, shall, upon completion thereof, be found to be less than, or in excess of, the said estimated cost, then the difference between such actual and estimated cost shall, if the actual cost is in excess of the said estimated cost, be paid to the Railroad by the party of the second part, promptly upon demand, but if such actual cost is less than the said estimated cost, such difference shall be repaid to the party of the second part by the Railroad, after the completion of said extension; it being understood that the party of the second part shall, upon the settlement of his account hereunder with the Railroad, own the said extension.

4. That he will, at his own cost and expense, maintain the said industrial track as extended from the point of clearance thereon to the terminus thereof, at all times during the life of this agreement, in good condition and repair and in all respects in accordance with the reasonable requirements of the Railroad looking to the safe and convenient operation of its engines and cars over and upon the same.

5. That the title to all of the rails, materials and fixtures in said existing track is and shall remain vested in the Railroad, and the Railroad shall have entire control of said industrial track as extended and the operation thereof, and may use the same as well for the business of third persons, not parties hereto, as for that of the party of the second part.

hereto; PROVIDED, however, that such use of said industrial track for the benefit of third persons shall not unreasonably interfere with the business of the party of the second part.

6. That he will indemnify and save harmless the Railroad against any and all damage resulting from negligence of the party of the second part, his servants and employees, in and about said industrial track and the right of way therefor; and furthermore, against any and all claims, demands, suits, judgments or sums of money accruing for loss or damage by fire communicated by locomotive engines or trains of the Railroad to buildings used by the party of the second part in connection with the business served by said industrial track, or to the contents of such buildings, or to other property stored by or with the consent of the party of the second part upon or near said industrial track. The Railroad hereby stipulates for this protection, as a condition of its agreement, herein expressed, to afford the above described terminal services and facilities to the party of the second part elsewhere than at its regular station.

AND IT IS MUTUALLY COVENANTED AND AGREED:

7. That neither the Director General of Railroads nor the said E. H. Coe assumes any personal liability or responsibility hereunder of any kind whatsoever, but all covenants herein made by the Director General of Railroads shall bind him only in his official capacity, and his successors in office, and all covenants herein made by the party of the second part shall bind the party of the second part, his heirs, personal representatives and assigns.

8. That this agreement of the Director General of Railroads shall not extend beyond the period of Federal control of railroads, and unless sooner terminated shall, as to him, terminate at the end of such Federal control.

9. That either party hereto may terminate this agreement at any time hereafter, but upon sixty (60) days' notice, in writing, to the other, of the election so to do; in which event, upon the taking effect of such notice, the Railroad may discontinue the operation of said industrial track and remove its property therefrom; and the party of the second part shall have the right to have the track materials in said extension located upon the right of way of the Railroad taken up and delivered to the party of the

second part; it being understood that the work of taking up said extension shall be done, if the Railroad so elects, by the forces of the Railroad, but in any event at the expense of the party of the second part.

IN WITNESS WHEREOF, the parties hereto have executed these presents

the day and year first above written.

In presence of:

E. J. Mahood
.....
E. J. Mahood
.....
As to Railroad.

DIRECTOR GENERAL OF RAILROADS,
By

E. J. Mahood
.....
Federal Manager, Hartwell Railroad.

In presence of:

E. P. Vickery
.....
E. P. Vickery
.....
As to party of second part.

R. T. Clunkers
.....

6-21-19-Lsb
15014

Washington, D. C., August 22nd, 1922 ltr
15014

IN RE: Memorandum of agreement between Hartwell Railway Company and
R. P. Glinksoles, dated August 5th, 1922, continuing in
effect from and after March 1st, 1920, agreement between them
dated June 25th, 1919, covering industrial track, Hartwell,
Ga., 'Terminable 60 days' notice.

Mr. Mauldin:

I send you herewith the original memorandum agreement.

P. H.



Postmarked

THIS MEMORANDUM OF AGREEMENT WITNESSETH:

That for good and sufficient considerations thereunto moving them, the undersigned HARTWELL RAILWAY COMPANY, hereinafter for convenience styled the Railway Company, and the undersigned R. P. CLINKSCALES, of Hartwell, Georgia, hereinafter for convenience styled the Industry (whether one or more individuals, a partnership, firm or corporation), do hereby covenant and agree each with the other, that the contract or agreement made and entered into on the 28th day of June, 1919, by and between the Director General of Railroads and the Industry, bearing said date, concerning an industrial track at HARTWELL, in the State of Georgia, as in said agreement described (being the contract to which this memorandum is attached), notwithstanding the limitation of said contract as to duration for the period of Federal control of railroads, has continued and shall continue in force from and after the first day of March, 1920, which was the date of expiration of the period of Federal control of railroads, and is binding upon the undersigned, as a contract between them, with like effect and to all intents and purposes as if the undersigned subscribers, parties hereto, had been joined as the parties to the said original contract or agreement hereinbefore mentioned, until the said contract or agreement shall be terminated by either of the subscribing parties hereto by sixty (60) days' written notice to the other of the intention to terminate the same.

WITNESS the following signatures, this 5 day of Aug, 1922.

In presence of:

[Signature]
As to Railway Company.

HARTWELL RAILWAY COMPANY,
By

[Signature]
Vice-President.

In presence of:

[Signature]
As to Industry.

[Signature]

AB 1242

GWRC EXHIBIT 7

FILED A-0111
HART SUPERIOR COURT

2014 OCT -2 AM 9:55

*Conroy*THE GORDON LAW FIRM
P.O. BOX 870
415 EAST HOWELL STREET
HARTWELL, GEORGIA 30643

THIS AGREEMENT, made and entered into by and between HARTWELL RAILROAD COMPANY, a Georgia corporation, hereinafter styled "Railroad," party of the first part; and HARTWELL FIRST UNITED METHODIST CHURCH, a religious organization, whose mailing address is 200 East Howell Street, Hartwell, GA 30643 hereinafter styled "Licensee," party of the second part:

WITNESSETH:Recorded
760 Page 436-439

10-2-2014

THAT the PARTIES HERETO agree as follows:

1. Railroad hereby grants unto Licensee, insofar as Railroad's title enables it so to do, the right to use a private road crossing, hereinafter called "crossing," upon and across, at grade, the right of way or property and track (whether more than one track) of Railroad running between Bowersville and Hartwell, Georgia, located at the present southerly end of Chandler Street in Hartwell, Georgia at or near Hart County, Georgia, located substantially as shown upon print Hartwell First United Methodist Church Crossing, dated December 14, 2007, hereunto annexed and made a part of this agreement.
2. Licensee will pay unto Railroad, for said privilege, a sum of ONE HUNDRED AND 00/100 DOLLARS (\$100.00), in advance, as consideration for the license.
3. Railroad will, for the accommodation of and at the expense of Licensee, perform the work of constructing and maintaining the portion of said crossing between the rails in said track and to the outside ends of the crossties on each side thereof.
4. Licensee will, at the expense of Licensee, construct and maintain said crossing (except the portion to be constructed and maintained by Railroad as aforesaid), including all necessary drainage, signage, and will maintain said portion of said crossing constructed by Licensee, in all respects in accordance with the requirements of Railroad looking to the safe and convenient operation and maintenance of its said line of railroad. Licensee agrees to reimburse Railroad, within 10 days of receipt of a bill rendered therefor, the cost to Railroad for constructing and maintaining said portion, of said crossing constructed and maintained by Railroad.
5. This license is a personal privilege to Licensee hereunder, and shall not be transferred or assigned without the written consent of Railroad.
6. No person other than Licensee, its agents, employees, patrons, or invitees, shall be permitted to use said crossing; Licensee hereby agreeing that said crossing shall be a private crossing for the use and convenience of Licensee, its agents, employees, patrons, or invitees only, and shall not be, or be permitted to become, a highway for the use of the public. To the end of preventing the use of said crossing by the public, Licensee will, at its own cost and expense, construct and maintain, at a point to be designated by the President of Railroad, or his duly authorized representative, a signboard clearly indicating that said crossing is for the private purposes of Licensee.
7. In each instance when a vehicle shall approach said crossing, the same shall be stopped, and shall not proceed over said track of Railroad until the driver, or other person in charge thereof, shall have ascertained that no train engine or car of Railroad is approaching said crossing.
8. Licensee accepts the privilege hereby granted with full cognizance of the risk of loss of life, personal injury and property loss or damage which may be caused: (1) by railroad operations, at or in the vicinity of said crossing; or (2) by the construction, maintenance or use of said crossing by the Licensee or others; or (3) by the presence of equipment or personnel of the Licensee, at or in the vicinity of said crossing, or on or in the vicinity of the right of way of the Railroad. The Licensee is willing to assume this risk entirely, and specifically covenants that the privilege granted hereby shall be used and enjoyed at the sole risk of the Licensee, and that neither Railroad, nor any corporate affiliate of the Railroad, shall have any responsibility whatever for any such loss, injury or damage. To that end, Licensee hereby specifically agrees to indemnify, defend and save harmless Railroad, and all corporate affiliates of the Railroad, from and against all cost, expense, liability, or loss resulting from death, personal injury, or property loss or damage, including attorney's fees, arising out of, connected with, or caused by (1) railroad operations, at or in the vicinity of said crossing; or (2) the construction, maintenance or use of said crossing by the Licensee or others; or (3) the presence of equipment or personnel of the Licensee, at or in the vicinity of said crossing, or on or in the vicinity of the right of way of the Railroad. The indemnity obligations imposed upon the Licensee by this paragraph shall be absolute, and shall not be affected by the negligence, either primary or contributory, of the Railroad or of any corporate affiliate of the Railroad. It is expressly agreed and understood that Licensee's duty to indemnify Railroad shall include,



but is not limited to, any potential liability, loss, damage or expense of Railroad or incurred by Railroad arising in whole or in part from the sole negligence of Railroad or any of its corporate affiliates.

9. In order to contribute toward the safety of train and motor vehicle operations at said crossing, Licensee will at all times during the life of this agreement, keep the vegetation on its property cut in such manner and to such extent as is necessary to permit a person approaching the crossing from either direction to see approaching trains before such person reaches a position of danger on or near the crossing. Licensee will also prevent the erection on its premises of any structures which would interfere with the view of approaching trains or other rail equipment operating on said track.

10. Licensee will procure and maintain, during the life of this agreement, a policy or policies of insurance covering the liability which is or may be imposed upon it by Article 8 of this agreement, in an amount not less than a combined single limit of \$5,000,000. Licensee shall have Railroad listed as an additional insured in all such policy or policies of insurance procured and maintained pursuant to Article 10 of this Agreement. Such policy or policies of insurance shall also contain a contractual liability endorsement. Licensee agrees to furnish Railroad a certificate or certificates evidencing the maintenance of such insurance, and Licensee further agrees to furnish Railroad, upon request, a copy of such policy or policies of insurance. All such certificates of insurance shall further contain a provision requiring the insurer to provide Railroad with 30 days notice prior to the effective date of any cancellation of the policies of insurance covered by it. All insurance policies required by this Article 10 must show in the (1) "Description, of Operations/Locations/Vehicles/Special Items Block on the Certificate of Insurance, and (2) on the Insurance Policy and all subsequent endorsements, an accurate description of the location of the project or property, the type of agreement, the date of the agreement and the parties to the agreement.

It is further understood and agreed that the furnishing by Licensee of evidence of such insurance, and acceptance of same by Railroad, is not intended to, and shall not limit, modify or otherwise affect the obligations or liabilities of Licensee under Article 8 of this agreement.

11. Without separate written consent of Railroad, Licensee shall not dedicate nor permit crossing to be used for any purpose or in any manner that might in any way make said crossing a public crossing or subject it to any public servitude. Railroad reserves and accepts unto itself the paramount right to continue to occupy, possess and use the area of the crossing for any and all railroad purposes. Railroad shall not be obligated to make cuts in its trains for the crossing. Licensee shall not at any time own or claim any right, title or interest in or to railroad's property occupied by Licensee's crossing, nor shall the exercise of this Agreement for any length of time give rise to any title to said property or any right or interest in Licensee other than the license created hereby.

12. Licensee shall not assign this agreement without the written consent of Railroad.

13. The word "Railroad" as used herein shall include any other Company whose property at the aforesaid location may be leased or operated by Railroad, said term also shall include Railroad's directors, officers, agents and employees, and any parent company, subsidiary or affiliate of Railroad and their directors, officers, agents and employees.

14. Either party hereto may terminate this agreement at any time hereafter by serving upon the other thirty (30) days written notice of election to do so. If Licensee shall violate any of its covenants herein, Railroad may terminate this agreement forthwith by written notice to Licensee of its election to do so. At or before the expiration of the time limited by any notice to Licensee of Railroad's election to terminate this agreement, Licensee will discontinue use of said crossing, and will restore said right of way or property to the condition existing prior to the construction of said crossing, or, upon default thereof, Railroad may, in addition to any other legal remedy it may have, close said crossing and restore the condition of said right of way or property, at the sole cost and expense, of Licensee.

15. This agreement shall take effect as of the 20 day of DECEMBER, 2007.

IN WITNESS WHEREOF, the PARTIES HERETO have executed this agreement in triplicate, each



part being an original, as of the day of 20 day of December, 2007.

In presence of:

Charles D. Bishop
As to Railroad

In presence of:

Jonat han D. Bessie
As to Licensee

HARTWELL RAILROAD COMPANY

By BR Anderson

HARTWELL FIRST UNITED METHODIST CHURCH

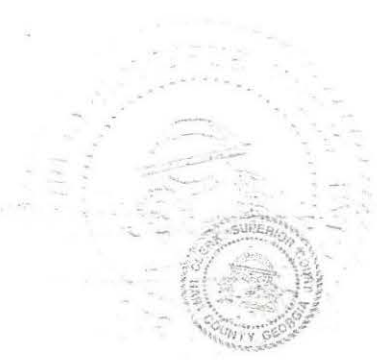
By J. M. Hutton, chair
Chair, Building Committee



HARTWELL FIRST UNITED METHODIST

CHURCH CROSSING

DECEMBER 14, 2007



STATE OF GEORGIA
COUNTY OF HART

I DO HEREBY CERTIFY THIS TO BE
A TRUE AND CORRECT COPY OF
THE WITHIN AND FOREGOING
DOCUMENT NOW OF RECORD IN
THIS OFFICE.

GIVEN UNDER MY HAND AND SEAL
OF SAID COURT THIS 3 DAY OF

March 20 17

A Robertson

DEPUTY CLERK (SEAL)
HART SUPERIOR COURT
HART COUNTY, GEORGIA



AB 1242

GWRC EXHIBIT 8

HARTWELL
HART SUPERIOR COURT

2014 OCT -2 AM 9:55

*[Signature]*THE GORDON LAW FIRM
P.O. BOX 870
415 EAST HOWELL STREET
HARTWELL, GEORGIA 30643

THIS AGREEMENT, made and entered into by and between HARTWELL RAILROAD COMPANY, a Georgia corporation, hereinafter styled "Railroad," party of the first part; and HARTWELL FIRST UNITED METHODIST CHURCH, a religious organization, whose mailing address is 200 East Howell Street, Hartwell, GA 30643 hereinafter styled "Licensee," party of the second part

WITNESSETH:

THAT the PARTIES HERETO agree as follows:

Recorded
760 Page 440-443
10-2-2014
Gray, Clerk

1. Railroad hereby grants unto Licensee, insofar as Railroad's title enables it so to do, the right to use two private sidewalk crossings, hereinafter called "crossing," upon and across, at grade, the right of way or property and track (whether more than one track) of Railroad running between Bowersville and Hartwell, Georgia, located west of Webb Street in Hartwell, GA substantially as shown upon prints C100 Site Plan Hartwell First United Church and C300 Details each dated July 2007, hereunto annexed and made a part of this agreement.
2. Licensee will pay unto Railroad, for said privilege, a sum of ONE HUNDRED AND 00/100 DOLLARS (\$100.00), in advance, as consideration for the license.
3. Licensee will, at the expense of Licensee, construct and maintain said crossing (except the portion to be constructed and maintained by Railroad as aforesaid), including all necessary drainage, signage, and will maintain said portion of said crossing constructed by Licensee, in all respects in accordance with the requirements of Railroad looking to the safe and convenient operation and maintenance of its said line of railroad. Licensee agrees to provide railroad 48 hours advance notice prior to installation or maintenance of said crossings.
5. This license is a personal privilege to Licensee hereunder, and shall not be transferred or assigned without the written consent of Railroad.
6. No person other than Licensee, its agents, employees, patrons, or invitees, shall be permitted to use said crossing; Licensee hereby agreeing that said crossing shall be a private crossing for the use and convenience of Licensee, its agents, employees, patrons, or invitees only, and shall not be, or be permitted to become, a highway for the use of the public. To the end of preventing the use of said crossing by the public, Licensee will, at its own cost and expense, construct and maintain, at a point to be designated by the President of Railroad, or his duly authorized representative, a signboard clearly indicating that said crossing is for the private purposes of Licensee.
7. In each instance when a individual shall approach said crossing, the same shall not proceed over said track of Railroad until they have ascertained that no train engine or car of Railroad is approaching said crossing.
8. Licensee accepts the privilege hereby granted with full cognizance of the risk of loss of life, personal injury and property loss or damage which may be caused: (1) by railroad operations, at or in the vicinity of said crossing; or (2) by the construction, maintenance or use of said crossing by the Licensee or others; or (3) by the presence of equipment or personnel of the Licensee, at or in the vicinity of said crossing, or on or in the vicinity of the right of way of the Railroad. The Licensee is willing to assume this risk entirely, and specifically covenants that the privilege granted hereby shall be used and enjoyed at the sole risk of the Licensee, and that neither Railroad, nor any corporate affiliate of the Railroad, shall have any responsibility whatever for any such loss, injury or damage. To that end, Licensee hereby specifically agrees to indemnify, defend and save harmless Railroad, and all corporate affiliates of the Railroad, from and against all cost, expense, liability, or loss resulting from death, personal injury, or property loss or damage, including attorney's fees, arising out of, connected with, or caused by (1) railroad operations, at or in the vicinity of said crossing; or (2) the construction, maintenance or use of said crossing by the Licensee or others; or (3) the presence of equipment or personnel of the Licensee, at or in the vicinity of said crossing, or on or in the vicinity of the right of way of the Railroad. The indemnity obligations imposed upon the Licensee by this paragraph shall be absolute, and shall not be affected by the negligence, either primary or contributory, of the Railroad or of any corporate affiliate of the Railroad. It is expressly agreed and understood that Licensee's duty to indemnify Railroad shall include, but is not limited to, any potential liability, loss, damage or expense of Railroad or incurred by Railroad arising in whole or in part from the sole negligence of Railroad or any of its corporate affiliates.
9. In order to contribute toward the safety of train and motor vehicle operations at said crossing, Licensee will, at all times during the life of this agreement, keep the vegetation on its property cut in such manner and to such extent as is necessary to permit a person approaching the crossing from either direction to see approaching trains before such person reaches a position of danger on or near the crossing. Licensee will also prevent the



erection on its premises of any structures which would interfere with the view of approaching trains or other rail equipment operating on said track.

10. Licensee will procure and maintain, during the life of this agreement, a policy or policies of insurance covering the liability which is or may be imposed upon it by Article 8 of this agreement, in an amount not less than a combined single limit of \$2,000,000. Licensee shall have Railroad listed as an additional insured in all such policy or policies of insurance procured and maintained pursuant to Article 10 of this Agreement. Such policy or policies of insurance shall also contain a contractual liability endorsement. Licensee agrees to furnish Railroad a certificate or certificates evidencing the maintenance of such insurance, and Licensee further agrees to furnish Railroad, upon request, a copy of such policy or policies of insurance. All such certificates of insurance shall further contain a provision requiring the insurer to provide Railroad with 30 days notice prior to the effective date of any cancellation of the policies of insurance covered by it. All insurance policies required by this Article 10 must show in the (1) "Description, of Operations/Locations/Vehicles/Special Items Block on the Certificate of Insurance, and (2) on the Insurance Policy and all subsequent endorsements, an accurate description of the location of the project or property, the type of agreement, the date of the agreement and the parties to the agreement.

It is further understood and agreed that the furnishing by Licensee of evidence of such insurance, and acceptance of same by Railroad, is not intended to, and shall not limit, modify or otherwise affect the obligations or liabilities of Licensee under Article 8 of this agreement.

11. Without separate written consent of Railroad, Licensee shall not dedicate nor permit crossing to be used for any purpose or in any manner that might in any way make said crossing a public crossing or subject it to any public servitude. Railroad reserves and accepts unto itself the paramount right to continue to occupy, possess and use the area of the crossing for any and all railroad purposes. Railroad shall not be obligated to make cuts in its trains for the crossing. Licensee shall not at any time own or claim any right, title or interest in or to railroad's property occupied by Licensee's crossing, nor shall the exercise of this Agreement for any length of time give rise to any title to said property or any right or interest in Licensee other than the license created hereby.

12. Licensee shall not assign this agreement without the written consent of Railroad.

13. The word "Railroad" as used herein shall include any other Company whose property at the aforesaid location may be leased or operated by Railroad, said term also shall include Railroad's directors, officers, agents and employees, and any parent company, subsidiary or affiliate of Railroad and their directors, officers, agents and employees.

14. Either party hereto may terminate this agreement at any time hereafter by serving upon the other thirty (30) days written notice of election to do so. If Licensee shall violate any of its covenants herein, Railroad may terminate this agreement forthwith by written notice to Licensee of its election to do so. At or before the expiration of the time limited by any notice to Licensee of Railroad's election to terminate this agreement, Licensee will discontinue use of said crossing, and will restore said right of way or property to the condition existing prior to the construction of said crossing, or, upon default thereof, Railroad may, in addition to any other legal remedy it may have, close said crossing and restore the condition of said right of way or property, at the sole cost and expense, of Licensee.

15. This agreement shall take effect as of the 1st day of August, 2008.

IN WITNESS WHEREOF, the PARTIES HERETO have executed this agreement in duplicate, each part being an original, as of the 31 day of July, 2008.

In presence of:

Tommy Peters
As to Railroad

HARTWELL RAILROAD COMPANY

By *Charles D. Bishop*

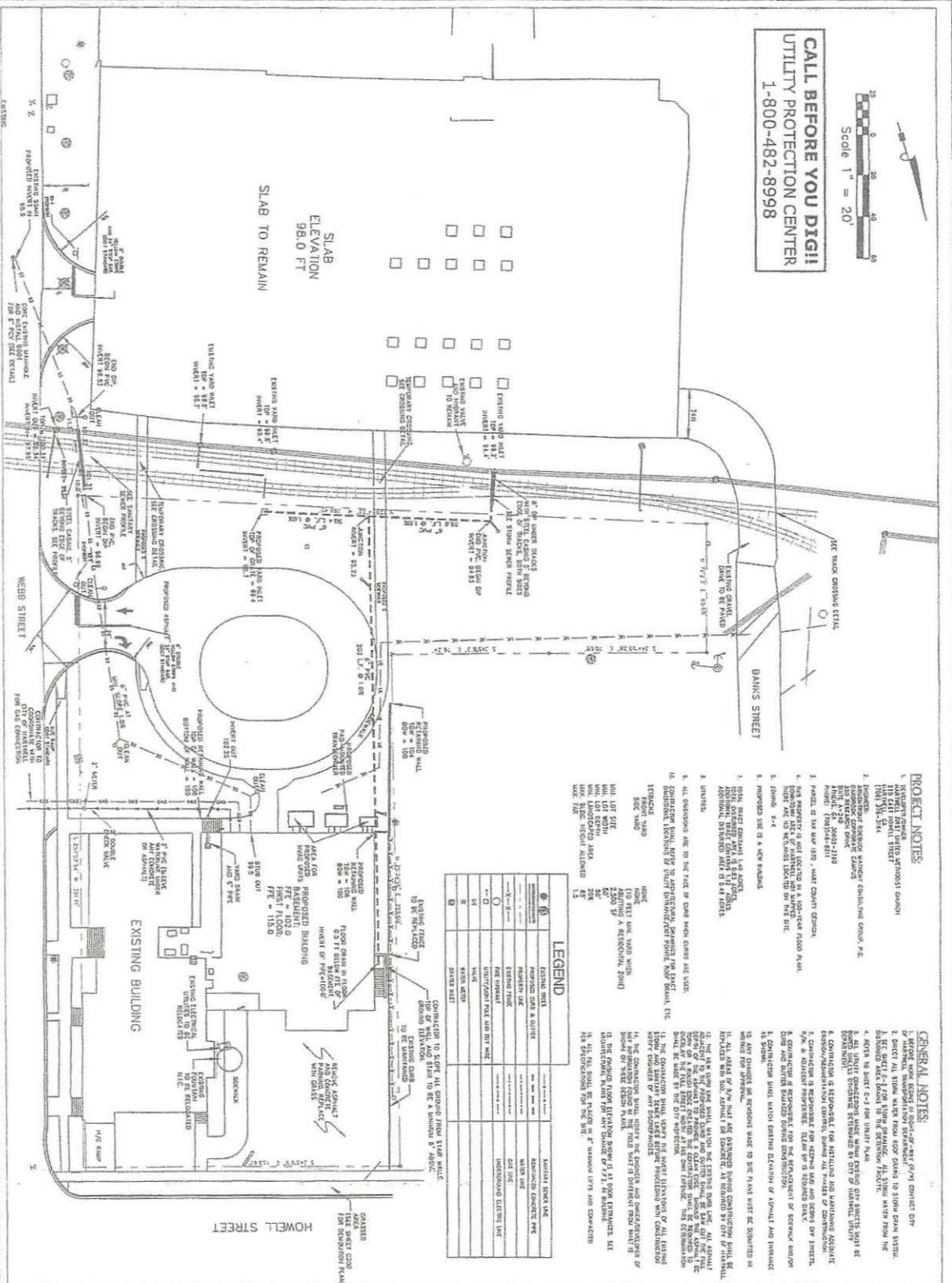
In presence of:

Ann Blum
As to Licensee
Donna B. Jones
As to Licensee

HARTWELL First United Methodist church
By: *JM Shuttlesworth*, *Chairman*
Building Committee



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UTILITY PROTECTION CENTER
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PROJECT NOTES

1. EXISTING BUILDING TO REMAIN. ALL UTILITIES TO BE MAINTAINED AND PROTECTED. NO NEW UTILITIES TO BE INSTALLED IN THIS AREA.
2. EXISTING BUILDING TO BE DEMOLISHED. ALL UTILITIES TO BE MAINTAINED AND PROTECTED. NO NEW UTILITIES TO BE INSTALLED IN THIS AREA.
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10. EXISTING BUILDING TO BE DEMOLISHED. ALL UTILITIES TO BE MAINTAINED AND PROTECTED. NO NEW UTILITIES TO BE INSTALLED IN THIS AREA.

GENERAL NOTES

1. ALL UTILITIES ARE TO BE MAINTAINED AND PROTECTED. NO NEW UTILITIES TO BE INSTALLED IN THIS AREA.
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10. ALL UTILITIES ARE TO BE MAINTAINED AND PROTECTED. NO NEW UTILITIES TO BE INSTALLED IN THIS AREA.

LEGEND

Symbol	Description
Circle with cross	EXISTING BUILDING
Circle with dot	EXISTING BUILDING
Circle with cross and dot	EXISTING BUILDING
Circle with cross and dot and line	EXISTING BUILDING
Circle with cross and dot and line and dot	EXISTING BUILDING
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Circle with cross and dot and line and dot and line and dot and line and dot and line and dot	EXISTING BUILDING

PROJECT OWNER
HARTWELL FIRST UNITED METHODIST CHURCH
220 EAST HOWELL STREET
HARTWELL, GEORGIA

DATE
07/01/2007

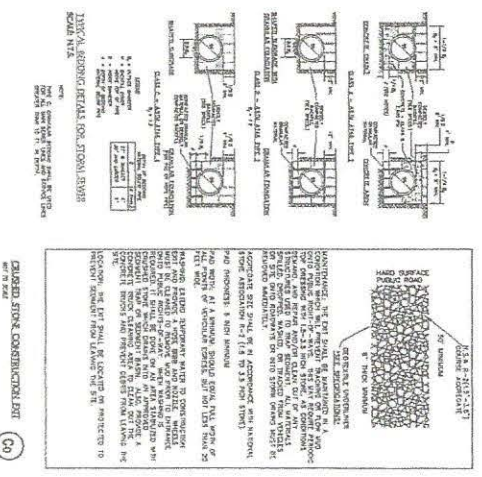
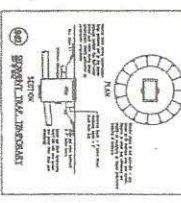
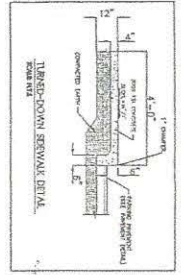
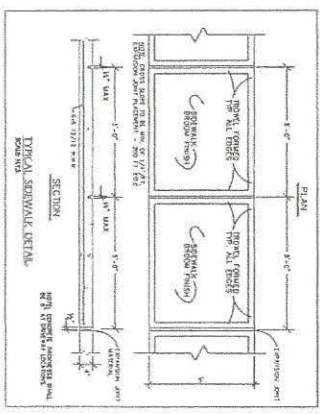
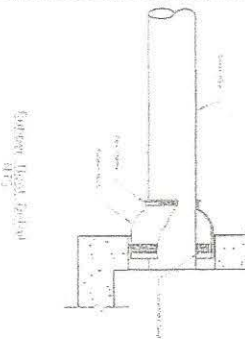
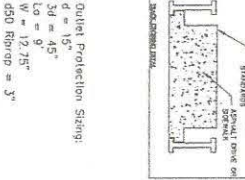
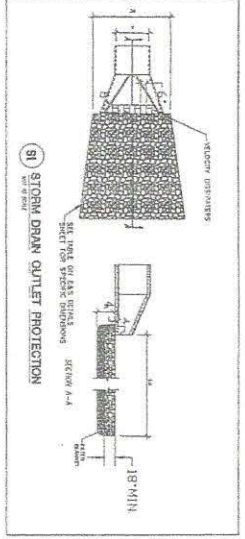
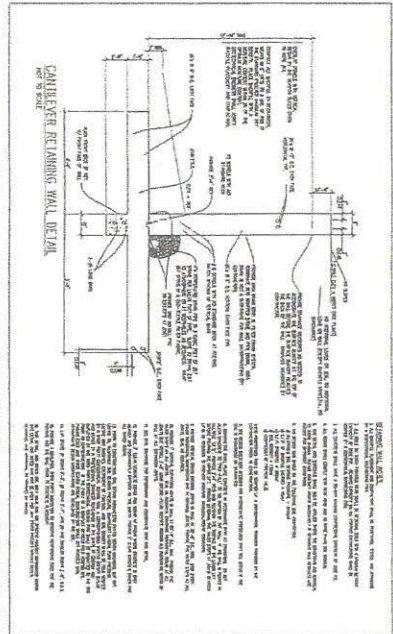
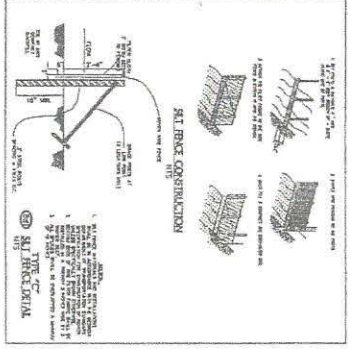
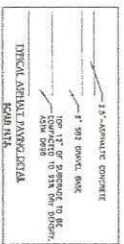
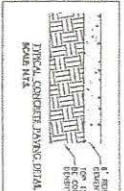
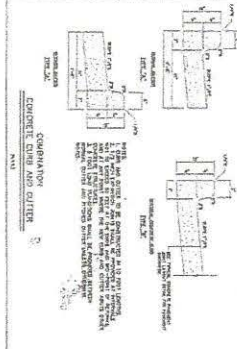
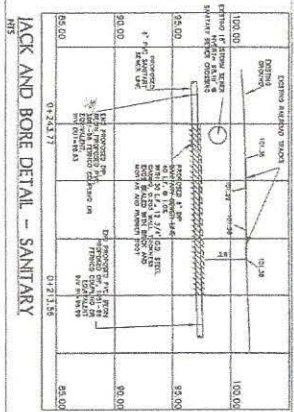
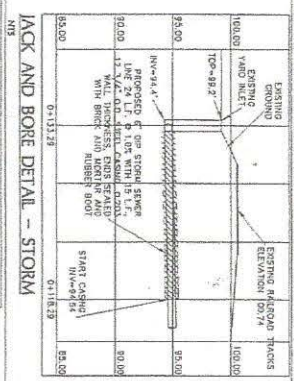
PROJECT NO.
C100

ARMSTRONG ROEBUCK MATHENY
CONSULTING GROUP, P.C.
10000 WOODBRIDGE DRIVE, SUITE 100
ROCKLEDGE, GEORGIA 30087

PROJECT NO.
C100

DATE
07/01/2007





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STATE OF GEORGIA
COUNTY OF HART
I DO HEREBY CERTIFY THIS TO BE
A TRUE AND CORRECT COPY OF
THE WITHIN AND FOREGOING
DOCUMENT NOW OF RECORD IN
THIS OFFICE.
GIVEN UNDER MY HAND AND SEAL
OF SAID COURT THIS 3 DAY OF

March 2017

A. Robertson
DEPUTY CLERK (SEAL)
HART SUPERIOR COURT
HART COUNTY, GEORGIA



AB 1242

GWRC EXHIBIT 9

THIS AGREEMENT, made and entered into this 1st day of August, 2008, by and between

HARTWELL RAILROAD COMPANY, a Georgia corporation, hereinafter styled "Company"; and

HARTWELL FIRST UNITED METHODIST CHURCH, a religious organization of Georgia, hereinafter styled "Licensee";

WITNESSETH:

THAT the PARTIES HERETO agree as follows:

ARTICLE 1. Company, insofar as its right, title, and interest enables it so to do, and without warranty, and in consideration of the covenants of Licensee, hereby grants unto Licensee the right to occupy and use for the purpose or purposes hereinafter mentioned:

Two parcels of the right of way or property of Company identified on Hartwell First United Methodist Church C100 Site Plan at Hartwell, Hart County Georgia, the location and dimensions of which are substantially as shown on print of Drawings C100, C200, and C300 each dated July 2008 hereunto attached and made a part hereof (hereinafter "Premises"); TOGETHER with the right to construct, maintain and remove a sanitary sewer and storm sewer which said improvements shall not become a fixture(s) upon the realty, but shall remain the property of Licensee and shall be removed from the Premises upon termination of this agreement.

Company reserves unto itself, and its permittees, the permanent right to maintain, operate, renew, or construct upon, under, or over said Premises, any existing pipe, electric transmission, telephone, telegraph, and signal lines, or any other facilities of like character. Licensee agrees that its occupation and use of the Premises is subject to any or all such rights and uses and to such rights as the owners or users thereof may have to use any road or highway, or portion thereof, which may be located upon or which may traverse said Premises.

ARTICLE 2. Licensee will use said Premises for the purpose of two underground pipes with casings and for no other purpose without the written consent of Company. This license is a personal privilege to Licensee and shall not be assigned without the written consent of Company, nor shall Licensee, except with such written consent, permit said Premises to be used for any other purpose by any other party, firm, or corporation.

ARTICLE 3. Licensee will pay the sum of \$240.00 as consideration for the license hereby granted.

ARTICLE 4. Licensee will pay to Company amounts sufficient to cover all taxes, license fees, or other charges assessed or levied upon or because of the property of or the business conducted by Licensee upon said Premises of Company. Licensee will also pay to Company amounts sufficient to cover all assessments or charges made against said Premises or against Company as owner of said Premises for street or sidewalk paving or other public improvements. At the option of Company, Licensee shall pay Company for such taxes, license fees, charges and assessments either in lump-sums or in annual installments.

ARTICLE 5. Licensee will not construct or install upon said Premises any buildings, structures, or improvements unless specifically permitted hereby or by written consent of Company. Any buildings, structures, or improvements erected by Licensee on said Premises, shall be substantially constructed or installed, maintained, and used in such manner as not to interfere with the business of Company, shall be kept in good repair and presentable condition, shall be located as described herein or otherwise approved in writing by Company, and shall not be relocated upon Company Premises except with the written consent of Company. Licensee will be responsible for all snow and ice removal and will keep said Premises in clean and sanitary condition, free of waste, trash, or unsanitary or flammable matter, and prevent the posting of advertising bills or signs upon said Premises, except the usual business sign of Licensee.

2014 OCT - 2
HARTWELL, GA
HARTWELL RAILROAD COMPANY
HARTWELL FIRST UNITED METHODIST CHURCH

Recorded 444-453
Book 760 Page 10-2-2014



ARTICLE 6. Licensee shall obtain all permits, certificates, licenses, and authorizations required by any governmental authority for any improvements to or use of the Premises.

ARTICLE 7. Licensee shall pay, satisfy, and discharge all claims, judgments or liens for material and/or labor, used or employed by Licensee or its agents in the construction, repair, maintenance, or removal of any buildings or structures located upon the Premises, whether the buildings or structures shall, under the terms of this agreement, be the property of Company or Licensee, and Licensee shall indemnify and save harmless Company, its officers, agents, and employees, from all such claims, judgments, liens, or demands whatsoever.

ARTICLE 8. In its use and occupancy of the Premises, Licensee will comply with the requirements of all federal, state, and local safety, health, environmental, and sanitation laws, rules, regulations, and ordinances, and will at its own expense make all corrections, repairs, or additions to said Premises of the facilities thereon which are necessary to ensure compliance with such laws, rules, regulations, and ordinances. If Licensee is required by any such laws, rules, regulations, and ordinances to obtain insurance or furnish other documentation of financial responsibility, Licensee shall provide evidence of such insurance or documentation to Company prior to occupancy. Any insurance obtained by Licensee pursuant to this agreement shall be maintained in force for the duration of the agreement and shall provide for notice to Company at least 30 days prior to cancellation or termination.

ARTICLE 9. Licensee shall not install any underground tanks or associated underground piping for the storage of any product on the Premises of Company without the express written consent of Company given prior to installation.

ARTICLE 10. Licensee shall not dispose of any wastes of any kind, whether hazardous or not, on said Premises and Licensee shall not conduct any activity on said Premises which may or does require a hazardous waste treatment, storage or disposal facility permit from either the federal or state agencies.

ARTICLE 11. Licensee shall furnish Company with a written report detailing all releases, as defined in 101(22) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund Act), P. L. 96-510, on or from the Premises whenever such releases are required to be reported to any Federal, State, or local authority in accordance with any Federal, State, or local laws, rules, regulations, and ordinances, and any regulations issued thereunder, including, but not limited to, those laws listed in Exhibit A attached hereto. Such written report shall identify the substance released, the amount released, and the measures undertaken to clean up and remove the released material and any contaminated soil or water, and shall further certify that no contamination remains or will remain after the cleanup measures have been completed. Such reports shall be supplemented by providing the Company with copies of any written reports required to be submitted by Licensee to any Governmental agency, in accordance with any Federal, State, or local law, rule, regulation, or ordinance, or by the Council on Environmental Quality's National Oil and Hazardous Substances Pollution Contingency Plan as it now exists or as it may hereafter be amended. The foregoing reports to Company and copies of reports to Governmental agencies shall be sent to Company's Director of Environmental Protection and Emergency Response, Hartwell Railroad Company, 1096 North Cherokee Road, Social Circle, GA 30025, within fifteen days after notification, whether written or otherwise, is required to be given by Licensee to any such Governmental agency.

ARTICLE 12. (a) If Company detects any violation of Articles 8, 9, 10 and 11, including any contamination of the Premises, Company shall so notify Licensee of the violation and Licensee shall take immediate steps to eliminate such violation. Licensee hereby agrees to indemnify and hold harmless Company, its officers, agents, and employees, from all liability resulting from violations of Articles 8, 9, 10 and 11 of this agreement and agrees to reimburse Company for all actual costs and expense incurred by Company in eliminating such violations, including, but not limited to, all costs and expenses to decontaminate the Premises.

(b) Licensee agrees that it will reimburse Company for and hold harmless



Company, its officers, agents, and employees, from all fines or penalties made or levied against Company by any Governmental agency or authority as a result of or in connection with Licensee's use of the Premises or of the facilities thereon or as a result of any release of any nature onto the ground or into the water or air by the Licensee from or upon the Premises. Licensee also agrees that it will reimburse Company for and hold Company harmless from any and all costs, expenses, and attorneys' fees and from all penalties or civil judgments incurred, entered, assessed, or levied against Company as a result of Licensee's use of the Premises or as a result of any release of any nature onto the ground or into the water or air by the Licensee from or upon the Premises. Such reimbursement or indemnification shall include but not be limited to any and all judgments or penalties to recover the cost of cleanup of any such release by Licensee from or upon the Premises and all expense incurred by Company as a result of such civil action including but not limited to attorneys' fees.

(c) The provisions of this Article 12 shall apply regardless of acquiescence or negligence or allegations thereof on the part of either party.

(d) The foregoing provisions of this Article 12 shall apply notwithstanding any other provision of this agreement to the contrary.

ARTICLE 13. The liability of the parties to this agreement, as between themselves, for death, personal injury, and property loss and damage which occurs by reason of, or arises out of, or is incidental to, the use or occupancy by Licensee of the Premises covered by this agreement, shall be determined in accordance with the following provisions regardless of considerations of fault or negligence:

(a) Licensee shall be solely responsible for, and shall bear all cost, expense, and liability resulting from, loss of or damage to property by fire;

(b) Licensee shall be solely responsible for, and shall bear all cost, expense, and liability resulting from death, personal injury, and loss and damage to property caused solely by the acts or omissions of Licensee, or of the agents or employees of Licensee, or by the violation by Licensee or its agents or employees of any of the terms of this agreement, or by the acts or omissions of Licensee concurring with the negligence of a third party;

(c) Except as provided in subparagraph (a) above, Company shall be solely responsible for, and shall bear all cost, expense, liability, resulting from death, personal injury, and property loss and damage caused solely by the acts of omissions of Company, or of the agents or employees of Company, or by the acts or omissions of Company concurring with the negligence of a third party;

(d) Except as provided in subparagraphs (a) and (b) above, Company and Licensee shall be jointly responsible for and shall bear equally all cost, expense, and liability resulting from death, personal injury, and property loss and damage caused by their joint and concurring acts;

(e) Licensee hereby agrees to indemnify and save harmless Company, its officers, agents and employees, from all of the liabilities and expenses assumed and undertaken by Licensee in this Article 13. Likewise, Company hereby agrees to indemnify and save harmless Licensee, its officers, agents and employees, from all of the liabilities and expenses assumed and undertaken by Company in this Article 13;

(f) Knowledge on the part of Company of a continuing violation of the terms of this agreement by Licensee shall constitute neither an omission nor acquiescence on the part of the Company, and shall in no event relieve Licensee of any of the responsibilities imposed upon Licensee hereunder.

ARTICLE 14. (a) In connection with the use of the Premises covered by this agreement, Licensee agrees to observe and be bound by the rules of the Company with respect to standard clearances for all railroad tracks located on or adjacent to the Premises covered by this agreement; that is to say, the Licensee agrees to maintain and preserve an overhead space of 23 feet measured perpendicularly from the top of the rail (except that overhead clearance



where wire lines extend over said track shall be such as may be prescribed by the Company) and a space 18 feet in width, measured 9 feet on each side from centerline of said track; provided, however, that the side clearance of 9 feet must be increased one and one-half (1-1/2) inches for every degree of curvature, which space shall be kept clear of any obstruction whatever, including but not limited to, all structures, facilities, or property of the Licensee which are or may be placed or erected above or parallel to said track.

(b) Notwithstanding anything contained in this agreement, and irrespective of any joint concurring negligence of Company, Licensee shall assume sole responsibility for and shall indemnify, save harmless, and defend Company, its officers, agents, and employees, from and against all claims, actions, or legal proceeding arising, in whole or in part, from the failure of Licensee to comply with any clearance requirements set forth in this agreement. In this connection, it is specifically understood that knowledge on the part of the Company of a violation of any such clearance requirements, whether such knowledge is actual or implied, shall not constitute a waiver and shall not relieve Licensee of its obligations to indemnify Company for losses and claims resulting from any such violation.

ARTICLE 15. In the event that the whole or any part of the Premises occupied by Licensee hereunder shall be taken for any purpose under the power of eminent domain, Licensee shall not be entitled to share in any award resulting from any such taking, nor shall licensee have any claim against the Company for any expense which may be incurred by Licensee as a result of such taking or as a result of termination of this agreement by reason of such taking, as herein provided. In the event that the taking shall be of the whole of the property herein occupied by Licensee or of such part as shall render said Premises untenable for the uses at such time made of the Premises by the Licensee, then this agreement and all rights and interests acquired hereunder shall terminate as of the date of the vesting of title to the property in the condemning authority, and in no event shall Licensee have any claim for the value of any unexpired period of this agreement.

ARTICLE 16. This agreement shall continue in effect from the date hereinabove set forth until terminated by either party upon thirty (30) days written notice to the other party, except that if Licensee shall default in the payment of rentals, or violate any other covenants herein, Company may terminate this agreement by 10 days written notice to Licensee of election so to do; service of such notice to be made either (a) by delivering a copy of the notice to Licensee, or (b) by mailing the same to or leaving it at the last known address of Licensee and posting in any conspicuous place upon said Premises.

ARTICLE 17. (a) Within five days of giving or receiving notice of termination of this agreement, Licensee shall furnish Company with a written certification that the Premises have not been contaminated by Licensee's operations, or if a condition of contamination exists or is believed to exist on any part of the Premises, Licensee shall give notice of that fact to Company, and Licensee shall promptly eliminate said condition.

(b) Upon the termination of this agreement, for whatever cause, Licensee will vacate the Premises immediately, remove all improvements owned by or placed thereon by Licensee, and leave the Premises, including the subsurface, in as good order and condition as said Premises may have been prior to the use and occupation thereof by Licensee and free from holes, obstructions, debris, wastes, or contamination of any kind.

(c) If Licensee fails to restore the Premises as provided herein prior to the date that Licensee is required to vacate such Premises, then Company may, at its option but at the sole cost and expense of Licensee, remove or arrange to remove all such property, improvements, obstructions, debris, waste, and contamination, and restore or arrange to restore both the surface and the subsurface of the Premises to as good order and condition as said Premises may have been prior to the use and occupation thereof by Licensee. Promptly upon bill rendered by Company, Licensee shall pay to Company the total cost of such removal and restoration, including, but not limited to, the cost of cleaning up and removing any contaminated soil or water.

ARTICLE 18. If Licensee fails to vacate the Premises prior to the date that Licensee is required to vacate such Premises, Company may, in addition to any other legal remedy it may have, re-enter and take possession of said Premises, oust Licensee and all persons



holding under Licensee, and restore or arrange to restore the surface and subsurface of the Premises, as described in Article 17 above. Company may also, after reasonable notice to Licensee, take possession of any property and improvements, including structures, if any, left on said Premises by Licensee and dispose of the same by sale or otherwise for the purpose of applying the proceeds against unpaid rental or to other payments due under the terms of this agreement, or for any other purposes hereinafter mentioned. If, in Company's judgment, any property or improvements so left on said Premises by Licensee is contaminated, has no value, or cannot be conveniently sold, Company may dispose of the same without notice to the Licensee in such manner as Company may determine to relieve itself of the burden of caring for such property and improvements, without accountability to Licensee.

ARTICLE 19. In addition to any other rights of entry reserved herein, Company reserves unto itself and its permittees the right to enter upon said Premise at any time for operation, maintenance, reconstruction, repair, or relocation of any building, trackage, or other structures located on said Premises; for inspection of the Premises; for taking whatever corrective actions the Company deems necessary to eliminate any violation of Articles 8, 9, 10 and 11, if, in the Company's judgment, the steps taken by Licensee are inadequate or not timely; and for any other lawful purpose.

ARTICLE 20. It is agreed between the parties that the applicable statute of limitations shall be tolled and shall not begin to run against the Company in connection with any controversy or dispute arising under the provisions or Articles 8, 9, 10, 11, 17 and 18 hereof until Company has received actual written notice of noncompliance with the aforementioned articles.

ARTICLE 21. No waiver by Company of any one breach of covenant or default by Licensee shall be construed as a waiver of any other or subsequent breach or default on the part of Licensee. Also, no declaration of termination of this agreement shall be construed to release Licensee from any covenant or obligation as to which Licensee may be in default at the date of such termination.

ARTICLE 22. Licensee agrees to pay all costs and expenses, including, but not limited to, reasonable attorneys' and consultants' fees, incurred by Company in connection with enforcing the performance of any of the provisions of this agreement.

ARTICLE 23. If any provision of this agreement, or the application thereof to any person or circumstances, shall for any reason and to any extent, be invalid or unenforceable, the remainder of this agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforceable to the fullest extent permitted by law.

ARTICLE 24. Licensee hereby agrees that the indemnities it undertakes in favor of Company, its officers, agents and employees, in this agreement will also apply in favor of the corporate affiliates of Company and to their respective officers, agents and employees as fully as if they were specified as indemnitees herein.

ARTICLE 25. (a) Prior to entry on Company's right of way or property and thereafter during the term of this Agreement, Licensee covenants and agrees that it shall procure and maintain during the life of this Agreement a policy of Commercial General Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence for injury or death of persons and damage to or loss or destruction of property. Such policy shall be endorsed to provide contractual liability coverage for liability assumed under this Agreement and shall be of a form that does not deny coverage for operations within 50 feet of any railroad hazard. In addition, said policy shall be endorsed to name Company as additional insured and shall include a severability of interests provision. As evidence of said insurance, a certificate of insurance shall be furnished to and approved by the Company's Risk Manager at the address in Article 25 prior to entry on Company's right of way or property. The certificate of insurance shall state that thirty (30) days advance written notice will be given to Company of any material change in, or cancellation of such insurance. Company may at any time and at its sole discretion, increase the limits of commercial general liability insurance required herein based on inflation increases.

(b) Licensee or its contractor shall procure at its sole cost and expense, and in a form with a company satisfactory to Company, a policy of Railroad Protective Liability Insurance during the period of construction of the Facilities. The Railroad Protective Liability Insurance policy shall name the Company as the named insured and have limits of not less than a combined single limit of \$2,000,000 each occurrence and \$6,000,000 in the aggregate for bodily injury and property damage, and physical damage to property. The policy shall be underwritten on Insurance Services Offices Form No. CG 00 35 07 98 and CG 28 31 07 98. The original Railroad Protective Liability Policy shall be furnished to and approved by the Company's Risk Manager at the address in Article 26, prior to entry on Company's right of way or property. Company may, at any time and at its sole discretion, increase the limits of Railroad Protective Liability policy required herein based on inflation increases.

(c) Licensee acknowledges and agrees that the insurance coverage required herein shall in no way limit Licensee's liability under this Agreement.

ARTICLE 26. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to Company or Licensee, as the case may be, at the address set forth below.

Company:

Licensee:

President
Hartwell Railroad Company
1096 North Cherokee Road
Social Circle, GA 30025

Hartwell First United Methodist Church
200 East Howell Street
Hartwell, GA 30643

IN WITNESS WHEREOF, The parties hereto have executed this agreement in duplicate, each part being an original, as of the date hereinabove first recited.

In presence of:

[Signature]
As to Company

By Charles D. Bishop

Title: Sen Mgr

[Signature]
As to Company

In presence of:

[Signature]
As to Licensee

By [Signature]
Chair, Building Committee
Title:

Donna B. Jones
As to Licensee



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EXHIBIT A

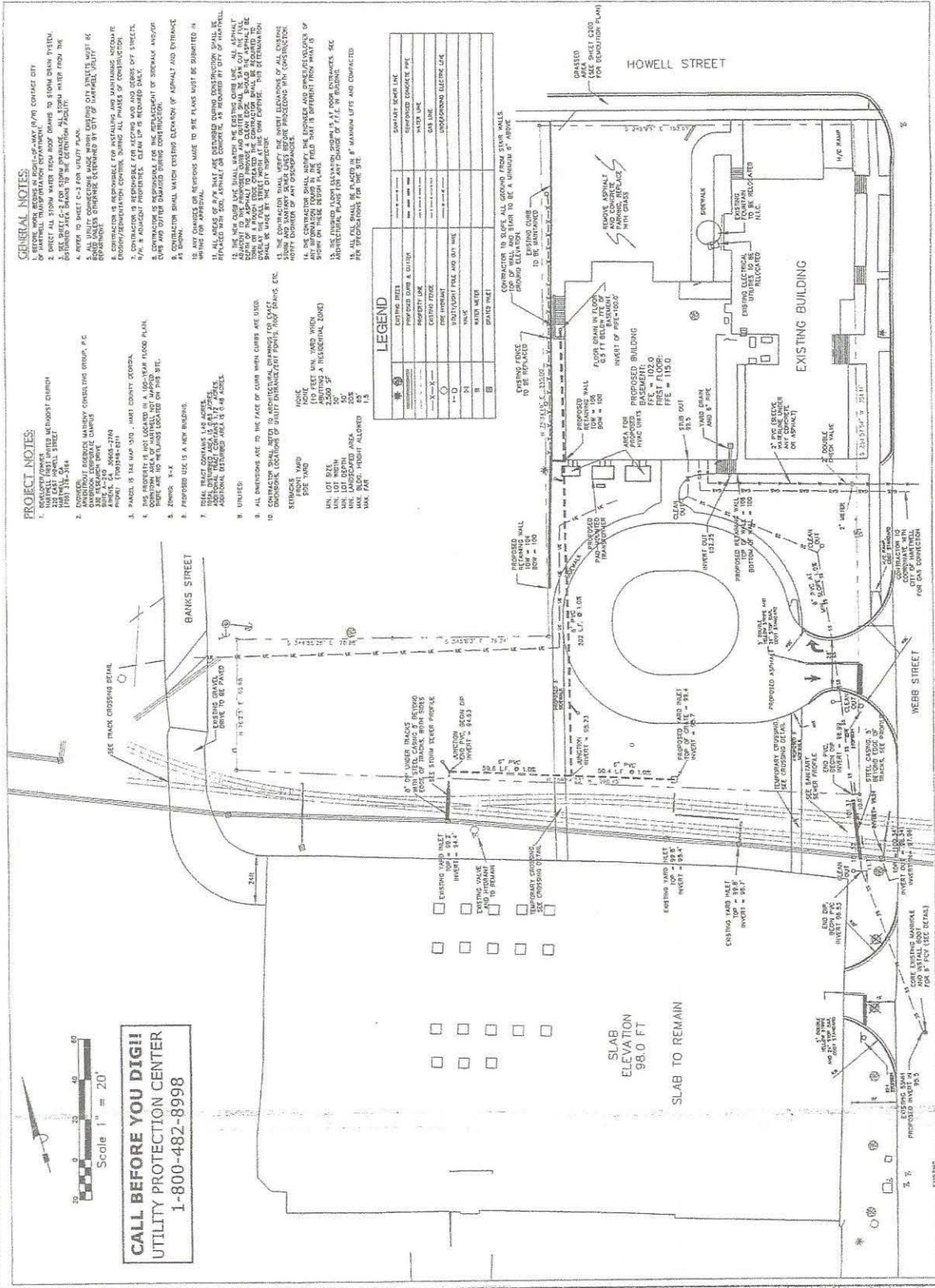
1. Federal Water Pollution Control Act (Clean Water Act), 33 U. S. C. 125 et seq.
2. Air Pollution Prevention and Control Act (Clean Air Act), 42 U. S. C. 7401 et seq.
3. Resource Conservation and Recovery Act of 1976, 42 U. S. C. 6901 et seq.
4. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund Act) PL 96-510.
5. The Rivers and Harbors Act of 1899 (The Refuse Act), 33 U. S. C. 401-413.
6. Federal Insecticide, Fungicide and Roedentcide Act, 7 U. S. C. 136 et seq.
7. Toxic Substances Control Act, 15 U. S. C. 2601 et seq.
8. Hazardous and Solid Waste Amendments of 1984, P. L. 98-616, including but not limited to Title VI (relating to underground storage tanks); codified as Subtitle I of the Resources Conservation and Recovery Act.
9. Superfund Amendments and Reauthorization Act of 1986, P. L. No. 99-499.
10. Emergency Planning and Community Right-to-Know Act of 1986, P. L. No. 99-499.

This is not intended to be a comprehensive list of federal statutes but is illustrative only.

PROJECT D0007 JULY 2007 HARTWELL FIRST UNITED METHODIST CHURCH 220 EAST HOWELL STREET HARTWELL, GEORGIA  QUESTIONS/COMMENTS/CLARIFICATIONS CALL: 800-999-5816 FAX: 800-999-5816 ADDRESS: 10000 WILSON ROAD, SUITE 100 DALLAS, TEXAS 75243-3890 ARCHITECT: ROBERTSON MATTHEWS CONSULTING GROUP, P.C. ENGINEERS, ARCHITECTS & INTERIOR DESIGN MANAGERS	 STATE OF GEORGIA DEPARTMENT OF REVENUE DIVISION OF GENERAL SALES AND USE TAXES 100 N. WILSON ROAD, SUITE 100 DALLAS, TEXAS 75243-3890 TEL: 800-999-5816 FAX: 800-999-5816 ADDRESS: 10000 WILSON ROAD, SUITE 100 DALLAS, TEXAS 75243-3890	REVISIONS <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>001</td> <td>07/11/07</td> <td>ISSUED FOR BIDDING</td> </tr> <tr> <td>002</td> <td>07/11/07</td> <td>ISSUED FOR BIDDING</td> </tr> <tr> <td>003</td> <td>07/11/07</td> <td>ISSUED FOR BIDDING</td> </tr> <tr> <td>004</td> <td>07/11/07</td> <td>ISSUED FOR BIDDING</td> </tr> <tr> <td>005</td> <td>07/11/07</td> <td>ISSUED FOR BIDDING</td> </tr> <tr> <td>006</td> <td>07/11/07</td> <td>ISSUED FOR BIDDING</td> </tr> <tr> <td>007</td> <td>07/11/07</td> <td>ISSUED FOR BIDDING</td> </tr> <tr> <td>008</td> <td>07/11/07</td> <td>ISSUED FOR BIDDING</td> </tr> <tr> <td>009</td> <td>07/11/07</td> <td>ISSUED FOR BIDDING</td> </tr> <tr> <td>010</td> <td>07/11/07</td> <td>ISSUED FOR BIDDING</td> </tr> <tr> <td>011</td> <td>07/11/07</td> 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CALL BEFORE YOU DIG!!
UTILITY PROTECTION CENTER
1-800-482-8998



STATE OF GEORGIA
COUNTY OF HART
I DO HEREBY CERTIFY THIS TO BE
A TRUE AND CORRECT COPY OF
THE WITHIN AND FOREGOING
DOCUMENT NOW OF RECORD IN
THIS OFFICE,
GIVEN UNDER MY HAND AND SEAL
OF SAID COURT THIS 3 DAY OF

March 20 17
A Robertson
DEPUTY CLERK (SEAL)
HART SUPERIOR COURT
HART COUNTY, GEORGIA



AB 1242

GWRC EXHIBIT 10

HARTWELL RAILROAD COMPANY

Established 1879

PO Box 429 □ Hartwell, Georgia 30643
(706) 376-2627 Telephone
(706) 376-1121 Fax

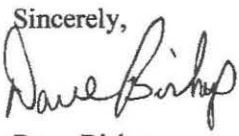
April 6, 2009

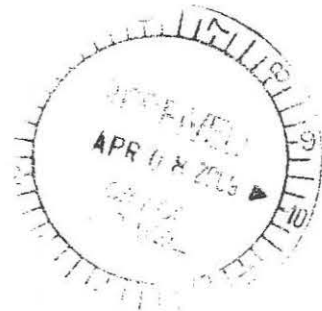
Mr. David Aldrich
City Manager
City of Hartwell
500 East Howell Street
Hartwell, GA 30643

Dear Mr. Aldrich:

In response to your letter of March 10, 2009 concerning the railroad crossings on Athens Street (U. S. Highway 29) and Webb Street (Georgia Highway 172), Hartwell Railroad wants to work with the City of Hartwell in reaching a resolution that works for both parties. Since the City has expressed a desire to keep the tracks open to downtown for possible future implementation of development, we await further discussions relative to that desire.

I look forward to hearing from you and to the development of an action plan that works for all concerned. I may be reached at 770-464-0761.

Sincerely,

Dave Bishop



AB 1242

GWRC EXHIBIT 11

Copy sent to K. Wentworth
@ GDOT

HARTWELL RAILROAD COMPANY

Established 1879

PO Box 429 □ Hartwell, Georgia 30643
(706) 376-2627 Telephone
(706) 376-1121 Fax

August 5, 2009

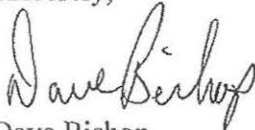
Mr. Todd Wood
Area Engineer
Georgia Department of Transportation
P. O. Box 330
Carnesville, GA 30521

Dear Mr. Wood:

Recently the Hartwell Railroad agreed to allow paving over the tracks of Hartwell Railroad at Highway 172 (Webb Street) in Hartwell, GA with the condition that said pavement would be removed at any time that Hartwell needed to reopen said track(s). It is necessary that we have written confirmation of this.

Please forward a letter confirming the verbal agreement to the address above.

Sincerely,



Dave Bishop

AB 1242

GWRC EXHIBIT 12

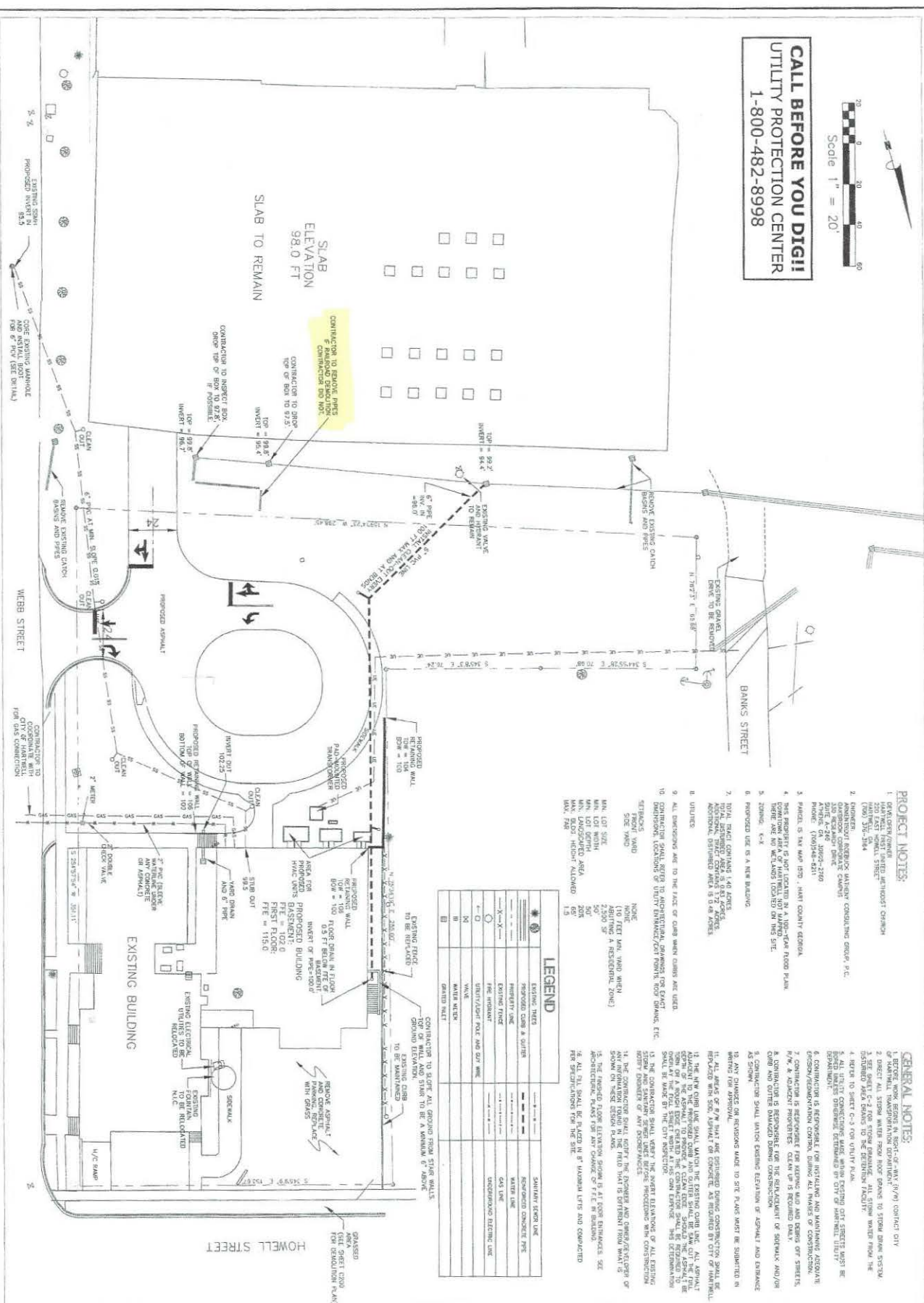
Scale 1" = 20'



GENERAL NOTES

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LEGEND			
	EXISTING TIE		SAFETY DECK JOINT
	PROPOSED CLOS. & GUTTER		PROPOSED CONCRETE PILE
	PERMEABILITY SLAB		WATER LINE
	EXISTING FENCE		GAS LINE
	PIPE IN/OUTLET		UNDERGROUND ELECTRIC LINE
	SEWER/SEPT. POLE AND GUY WIRE		
	WALK		
	MAINT. WALK		
	GRADED MTD.		



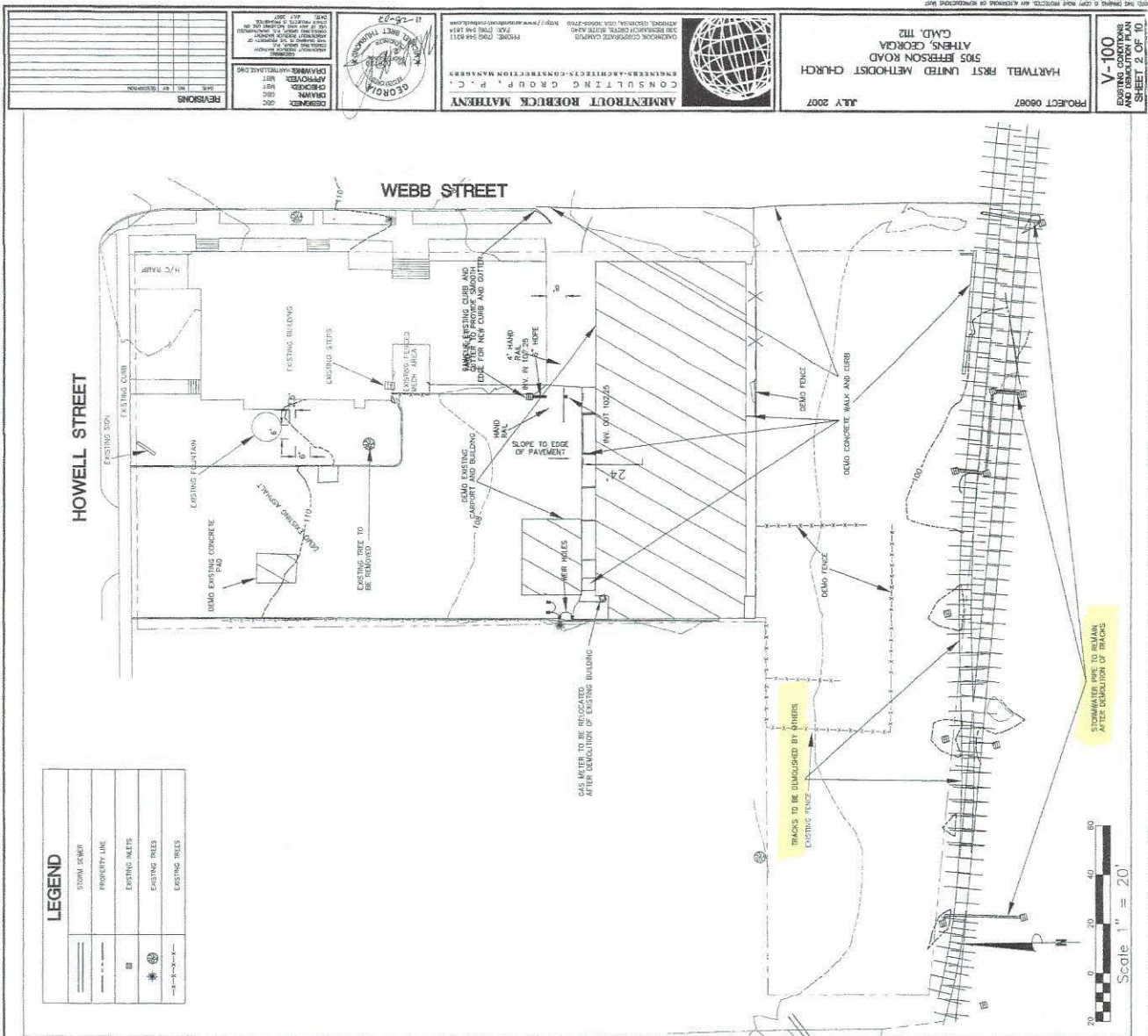
AB 1242

GWRC EXHIBIT 13

1. PROHIBIT PEDESTRIAN ACCESS TO THE CONSTRUCTION AREA.

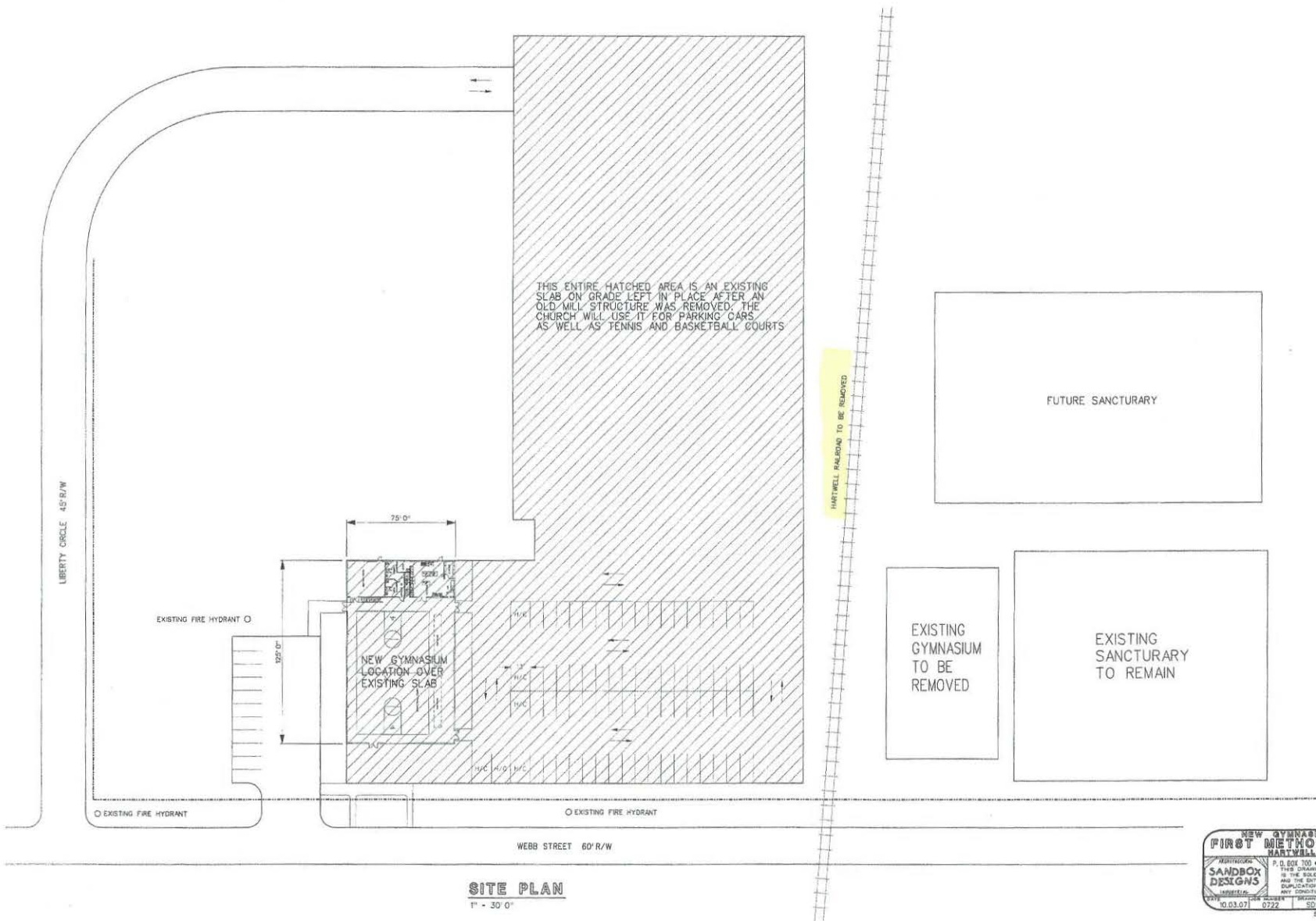
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1-800-482-8998



AB 1242

GWRC EXHIBIT 14



**NEW GYMNASIUM FACILITY
FIRST METHODIST CHURCH
HARTWELL, GEORGIA**

SANDBOX DESIGNS

P.O. BOX 700 • 706.353.9900 • HARTWELL, GA 30646

THIS DRAWING AND ITS REPRESENTATION IS THE SOLE PROPERTY OF SANDBOX DESIGNS AND THE ENTRY HEREIN IS THIS TITLE BLOCK. DUPLICATION WILL NOT BE ALLOWED UNDER ANY CONDITIONS WITHOUT WRITTEN PERMISSION.

DATE: 10.03.07 0722 DESIGNED BY: SDC DRAWN BY: SDC

S-1 of 1

sandboxdesigns@aol.com

AB 1242

GWRC EXHIBIT 15

also shall notify the requester that it has been provided.

(c) *Notice of intent to disclose.* The Commission shall consider carefully submitter's objections and specific grounds for nondisclosure prior to its determination whether or not to disclose the requested information. Whenever the Commission decides to disclose the information over a submitter's objection, it shall provide the submitter with written notice containing the following:

(1) A description or copy of the information to be disclosed;

(2) The reasons why the submitter's disclosure objections were not sustained; and

(3) A specific disclosure date, which shall be a reasonable number of days after the notice of intent to disclose has been mailed to the submitter.

At the same time that notice of intent to disclose is given to a submitter, the Commission shall notify the requester accordingly.

(f) *Notice of lawsuit.* (1) Whenever a FOIA requester brings legal action seeking to compel disclosure of confidential commercial information, the Commission shall promptly notify the submitter.

(2) Whenever a submitter brings legal action seeking to prevent disclosure of confidential commercial information, the Commission shall promptly notify the requester.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Commission determines that the information requested should not be disclosed; or

(2) The information already has been published or otherwise officially made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) Disclosure is required by a Commission rule that:

(i) was adopted pursuant to notice and public comment;

(ii) specifies narrow classes or records submitted to the Commission that are to be released; and

(iii) provides in exceptional circumstances for notice when the submitter provides written justification, at the

time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(5) The information requested is not designated by the submitter as exempt from disclosure, when the submitter had an opportunity to do so at the time of submission or within a reasonable time thereafter, unless the Commission has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(6) The designation made by the submitter in accordance with these regulations appears obviously frivolous; in such case, the Commission must provide the submitter only with written notice of any administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

[54 FR 16388, Apr. 24, 1989]

PART 1002—FEES

Sec.

1002.1 Fees for records search, review, copying, certification, and related services.

1002.2 Filing fees.

1002.3 Updating user fees.

AUTHORITY: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

§ 1002.1 Fees for records search, review, copying, certification, and related services.

Certifications and copies of such tariffs, reports and other public records and documents on file with the Interstate Commerce Commission as may be practicable to furnish, as well as searches and copying of records not considered public under the Freedom of Information Act (5 U.S.C. 552), will be furnished on the following basis:

(a) Certificate of the Secretary, \$5.00.

(b) Services involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of \$19.00 per hour.

(c) Services involved in checking records to be certified to determine authenticity, including the clerical work, etc., incidental thereto, at the rate of \$13.00 per hour.

(d) Electrostatic copies of tariffs, reports, and other public documents, at the rate of \$0.60 per letter size or legal size exposure. A minimum charge of \$3.00 will be made for this service.

(e) The fee for search and copying services requiring ADP processing are as follows:

(1) A fee of \$30.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

(2) The fee for port minute time for the search will be set at the current rate set forth in the Commission's contract with its time sharing computer contractor. Information on those charges can be obtained from the Chief, Section of Systems Development, Interstate Commerce Commission, Washington, DC 20423.

(3) Printing shall be charged at the rates of \$.10 per page of computer generated output with a minimum charge of \$.25. A charge of \$30 per reel of magnetic tape will be made if the tape is to be permanently retained by the requestor.

(f) The fees for search, review and copying services for records not considered public under the Freedom of Information Act are as follows:

(1) When records are sought for commercial use, requesters will be assessed the full and reasonable direct costs of document search, review and duplication. A "commercial use" request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(2) When records are not sought for commercial use and a request is made by an educational or noncommercial scientific institution, requesters will be assessed only for the cost of duplication (excluding charges for the first 100 pages). The term "Educational Institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of

undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research. The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. They must show that their request is authorized by and under the auspices of a qualifying institution and the records are not sought for a commercial use but, instead, are in furtherance of scholarly or scientific research.

(3) Requesters who are representatives of the news media (persons actively gathering news for an entity that is organized and operated to publish or broadcast news to the public) will be assessed only for the cost of duplication (excluding charges for the first 100 pages) if they can show that their request is not made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered a request for a commercial use.

(4) All other requesters will be assessed fees which recover the full, reasonable direct cost of searching for and duplicating records that are responsive to the request (excluding charges for the first 100 pages of duplication and the first two hours of search time).

(5) All requesters must reasonably describe the records sought.

(6) The search and review hourly fees will be based upon employee grade levels in order to recoup the full, allowable direct costs attributable to their performance of these functions. They are as follows:

Grade	Rate	Grade	Rate
GS-1	\$4.55	GS-9	\$12.85
GS-2	6.04	GS-10	14.26
GS-3	6.81	GS-11	15.57
GS-4	7.64	GS-12	18.78
GS-5	8.55	GS-13	22.33
GS-6	9.53	GS-14	26.39
GS-7	10.59	GS-15 & over	31.04
GS-8	11.72		

(7) The fee for electrostatic copies shall be \$.60 per letter or legal size exposure with a minimum charge of \$3.00.

(8) The fee charged for ADP data is set forth in paragraph (e) of this section.

(9) If the cost of collecting any fee would be equal to or greater than the fee itself, it will not be assessed.

(10) A fee may be charged for searches which are not productive and for searches for records or those parts of records which subsequently are determined to be exempt from disclosure.

(11) Interest charges may be assessed on any unpaid bill starting on 31st day following the day on which the billing was sent, at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing. The Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, will be utilized to encourage payment where appropriate.

(12) If search charges are likely to exceed \$25, the requester will be notified of the estimated fees unless requester willingness to pay whatever fee is assessed has been provided in advance. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester agrees in writing to accept the prospective charges.

(13) An advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed \$250. Requesters who have previously failed to pay a fee charged in timely fashion (i.e. within 30 days of the date of billing) may be required first to pay this amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) also will not begin until after a requester has complied with this provision.

(14) Documents shall be furnished without any charge or at a charge reduced below the fees set forth above if disclosure of the information is in the

public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The following six factors will be employed in determining when such fees shall be waived or reduced:

(i) The subject of the request: Whether the subject of the requester records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding";

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

This fee waiver and reduction provision will be implemented in accordance with guidelines issued by the U.S. Department of Justice on April 2, 1987 and entitled "New FOIA Fee Waiver Policy Guidance." A copy of these guidelines may be inspected or obtained from the ICC's Freedom of Information Office, 12th & Constitution Avenue NW., Room 3132, Washington, DC 20423.

(g) Payment for services described in paragraphs (a) through (f) of this section may be made in cash or by postal money order or check payable to the

order of the Secretary, Interstate Commerce Commission, Washington, D.C., and forwarded to his office.

(h) Transcript of testimony and of oral argument, or extracts therefrom, may be purchased by the public from the Commission's official reporter. For information regarding the official reporter, contact the Secretary, Interstate Commerce Commission, Washington, DC 20423.

[32 FR 20010, Dec. 20, 1967, as amended at 47 FR 47394, Oct. 26, 1982; 49 FR 18491, May 1, 1984; 49 FR 39548, Oct. 9, 1984; 50 FR 40025, Oct. 1, 1985; 50 FR 41159, Oct. 9, 1985; 52 FR 46481, Dec. 8, 1987; 53 FR 23388, June 22, 1988; 53 FR 33814, Sept. 1, 1988; 54 FR 36030, Aug. 31, 1989]

§ 1002.2 Filing fees.

(a) *Manner of payment.* (1) Except as specified in paragraph (a)(2) of this section, all filing fees will be payable at the time and place the application, petition, notice, tariff, contract or other document is tendered for filing.

(2) When emergency temporary operating authority applications (Item 9) and emergency temporary operating authority extensions (Item 10) are initiated by telegram or telephone, the fee or fees are due when the OCCA 95 application is submitted to the appropriate Commission regional office.

(3) Fees will be payable to the Interstate Commerce Commission by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or credit cards (Visa or Master Card).

(b) *Deficiencies.* (1) Any filing that is not accompanied by the appropriate filing fee is deficient.

(2) The Secretary will inform any person who submits a deficient filing that:

(i) Such filing will be rejected, unless the appropriate fee is submitted within a specified time;

(ii) The Commission will not process any filing that is deficient under this paragraph; and

(iii) The date of filing will be deemed the date on which the Commission receives the appropriate fee.

(3) This provision does not preclude a determination that a filing is deficient for any other reason.

(c) *Fees not refundable.* Fees will be assessed for every filing in the type of proceeding listed in the schedule of fees contained in paragraph (f) of this section, subject to the exceptions contained in paragraphs (d) and (e) of this section. After the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Commission, the filing fee will not be refunded, regardless of whether the application, petition, notice, tariff, contract, or other document is granted or approved, denied, dismissed, or withdrawn. If an application, petition, notice, tariff, contract, or other document is rejected by the Commission as incomplete or for some other reason, prior to docketing or acceptance, the fee will be returned. If an application is rejected as incomplete after docketing, the applicant will be given the opportunity to file a replacement application with reference to the fee number assigned to the prior application and no additional fee will be required, but the fee will not be refunded. If an individual exemption proceeding becomes a matter of general applicability and is handled through the rulemaking process, the Commission will refund the filing fee.

(d) *Related or consolidated proceedings.* (1) Separate fees need not be paid on related applications filed by the same applicant which would be the subject of one proceeding, such as an application for removal of one or more restrictions in more than one certificate or permit held by the same person; a related plan of track relocation, joint use, purchase of trackage rights, and issuance of securities (however, such applications must be filed by the same applicant that filed the primary application); a motor common carrier acquisition application combined with a related application for a certificate of public convenience and necessity; or the like. In such instances, the only fee to be assessed will be that applicable to the embraced proceeding which carries the highest filing fee as listed in paragraph (f) of this section, except that for directly related applications involving a transfer under 49 U.S.C. 10926 or an application on Form OP-1 for gateway elimination and/or a conversion of a

certificate of registration to a certificate of public convenience and necessity, the sole fee shall be the basic fee for the transfer application. However, the directly related application must be filed at the same time the primary application is filed.

(2) Each filing of an original or updated notice of intent to engage in compensated intercorporate hauling operations shall be considered a separate filing, and shall be subject to payment as described in paragraph (f)(12) of this section.

(3) Separate fees will be assessed for the filing of temporary operating authority applications as provided in paragraphs (f) (8), (9) and (10) of this section, regardless of whether such applications are related to an application for corresponding permanent operating authority. A separate fee will be assessed for the filing of an application for temporary authority to operate a motor or water carrier as provided in paragraph (f)(24) of this section regardless of whether such application is related to a corresponding transfer proceeding as provided for in paragraph (f)(25) of this section or a notice of exemption as provided for in paragraph (f)(27) of this section.

(4) The Commission may reject concurrently filed applications, petitions, notices, contracts, or other documents asserted to be related and refund the filing fee if, in its judgment, they embrace two or more severable matters which should be the subject of separate proceedings.

(e) *Waiver of reduction of filing fees.* It is the general policy of the Commission not to waive or reduce filing fees except as described below:

(1) Filing fees are waived for an application or other proceeding which is filed by a federal government agency, or a state or local government entity. For purposes of this section the phrases "federal government agency" or "government entity" do not include a quasi-governmental corporation or government subsidized transportation company.

(2) In extraordinary situations the Commission will accept requests for waivers or fee reductions in accordance with the following procedure:

(i) *When to request.* At the time that a filing is submitted to the Commission the applicant may request a waiver or reduction of the fee prescribed in this part. Such request should be addressed to the Secretary.

(ii) *Basis.* The applicant must show the waiver or reduction of the fee is in the best interest of the public, or that payment of the fee would impose an undue hardship upon the requestor.

(iii) *Commission action.* The Secretary will notify the applicant of the decision to grant or deny the request for waiver or reduction.

(f) *Schedule of filing fees.*

Type of Proceedings	Fees
Part I Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority	\$200
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10922(b)(5)(A) to transport food and related products	100
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.54	2,200
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a placard, or the change of a highway name or number	40
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	150
(6) An application to remove restriction or broaden unduly narrow authority under 49 CFR 1160.107-1160.114	250
(7) An application for authority to deviate from authorized regular route authority under 49 U.S.C. 10923(a)	100
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b)	100
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1)	70
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue	10
(11) Request for name change of carrier, broker, or household goods freight forwarder	8
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.4	50
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10622(a)(5)	60
(14) (Reserved)	

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Type of Proceedings	Fees	Type of Proceedings	Fees
(15) A joint petition to substitute applicant in a pending operating rights proceeding.....	22	(43) [Reserved]	
(16) [Reserved]		Part VI: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
Part II: Non-Rail Applications to Discontinue Transportation		(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103.....	7,600
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 10906.....	9,000	(45) An application for the pooling or division of traffic 49 U.S.C. 11342.....	4,100
(18) A petition to discontinue motor carrier of passenger transportation in one state.....	1,000	(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11345.....	
(19) [Reserved]		(i) Major transaction.....	148,200
Part III: Non-Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement		(ii) Significant transaction.....	29,600
(20) An application for the pooling or division of traffic.....	1,700	(iii) Minor transaction.....	2,500
(21) An application involving the purchase, lease, consolidation, merger or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343.....	850	(iv) Exempt transaction [49 CFR 1180.2(d)].....	600
(22) An application for approval of a non-rail rate association agreement. 49 U.S.C. 10706.....	11,000	(v) Responsive application.....	2,500
(23) An application for approval of an amendment to a non-rail rate association agreement.....		(47) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343.....	
(i) Significant amendment.....	1,800	(i) Major transaction.....	148,200
(ii) Minor amendment.....	40	(ii) Significant transaction.....	29,600
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349.....	200	(iii) Minor transaction.....	2,500
(25) An application to transfer or issue a certificate or permit, including a certificate of registration, and a broker's license or change of control of companies holding broker's license 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544.....	200	(iv) Exempt transaction [49 CFR 1180.2(d)].....	600
(26) An application for approval of a motor vehicle rental contract. 49 CFR 1057.41(d).....	150	(v) Responsive application.....	2,500
(27) A petition for exemption under 49 U.S.C. 11343(e).....	200	(48) An application to acquire trackage rights over, joint ownership of, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343.....	
(28)-(32) [Reserved]		(i) Major transaction.....	148,200
Part IV: Rail Applications for Operating Authority		(ii) Significant transaction.....	29,600
(33) (i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10801.....	2,900	(iii) Minor transaction.....	2,500
(ii) Exempt transaction under 49 CFR 1150.31.....	1,000	(iv) Exempt transaction [49 CFR 1180.2(d)].....	600
(34) Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i).....	3,500	(v) Responsive application.....	2,500
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii).....	2,000	(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343.....	
(36)-(37) [Reserved]		(i) Major transaction.....	148,200
Part V: Rail Applications to Discontinue Transportation Services		(ii) Significant transaction.....	29,600
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act, bankrupt railroads or exempt abandonments under 49 CFR 1152.50).....	3,000	(iii) Minor transaction.....	2,500
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act.....	150	(iv) Exempt transaction [49 CFR 1180.2(d)].....	600
(40) Abandonments filed by bankrupt railroads 49 CFR 1152.40.....	750	(v) Responsive application.....	2,500
(41) Exempt abandonments. 49 CFR 1152.50.....	1,500	(50) An application for a determination of fact of competition 49 U.S.C. 11321 (a)(2) or (b).....	20,600
(42) A notice or petition to discontinue passenger train service.....	9,000	(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706.....	27,900
		(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706.....	
		(i) Significant amendment.....	5,200
		(ii) Minor amendment.....	40
		(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322.....	300
		(54) (i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for competitive bidding requirements of Ex Parte No. 158, 48 CFR 1175. 49 U.S.C. 11901.....	1,300
		(ii) An exempt transaction under 49 CFR 1175.....	600
		(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505.....	
		(i) Financial exemption petitions.....	2,500
		(ii) Abandonment exemption petitions.....	2,000

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Type of Proceedings	Fees
(56) Other exemption petitions.....	1,100
(56) An application for forced sale of bankrupt railroad lines. 49 CFR 1180.40-49; 49 U.S.C. 815.....	1,500
(57)-(59) [Reserved]	
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods.....	500
(61) A complaint seeking of a petition requesting institution of an investigation seeking the prescription or division of joint rates, terms or charges. 49 U.S.C. 10705(d)(1)(A).....	3,500
(62) A petition for declaratory order.....	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding.....	600
(ii) All other petitions for declaratory order.....	1,100
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases.....	8,100
(64) A petition for exemption from filing tariffs by bus carriers.....	200
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(e)(5)(A).....	2,800
(66) Petition for review of state regulation of interstate rates, rules or practices filed by interstate rail carriers. 49 U.S.C. 11501.....	1,000
(67) Petition for review of state regulation of interstate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501.....	1,700
(68)-(71) [Reserved]	
Part VIII: Informal Proceedings	
(72) An application for authority to establish reduced value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster).....	450
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements.....	50
(74) The filing of tariffs, rate schedules and contracts including supplements.....	(1)
(75) Special docket applications from rail and water carriers. (There is no fee for requests involving sums of \$25,000 or less).....	60
(76) Informal complaint about rail rate application.....	200
(77) (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BIPDI).....	3,000
(ii) An application for original qualification as self-insurer for cargo insurance.....	300
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of \$10 per accepted certificate of insurance or surety bond as indication of IOC insurance activity. (There is a \$50 annual minimum; but the minimum does not apply to an instrument submitted in lieu of a broker surety bond).....	(2)
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR 1057.....	300

Type of Proceedings	Fees
(80) A petition for reinstatement of revoked operating authority.....	50
(81)-(82) [Reserved]	
(83) Petition for reinstatement of a dismissed operating rights application.....	300
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c).....	(3)
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceedings.....	1,100
(86) Informal opinions about rate applications (all modes).....	40
(87)-(95) [Reserved]	
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent.....	(4)
(97) Request for service list for proceedings.....	(5)
(98) Requests for copies of the one-percent railroad waybill sample.....	100
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation.....	(6)
(100) Application fee for Interstate Commerce Commission Practitioners' Exam.....	70

¹ 8 per series transmitted.
² 10 per accepted certificate or other instrument submitted in lieu of a broker surety bond.
³ 15 per document.
⁴ 17 per delivery.
⁵ 8 per list.
⁶ 15 per movement verified.

[49 FR 18482, May 1, 1984, as amended at 50 FR 40026, Oct. 1, 1985; 50 FR 41159, Oct. 9, 1985; 50 FR 41899, Oct. 16, 1985; 50 FR 43193, Oct. 24, 1985; 50 FR 47224, Nov. 15, 1985; 51 FR 18589, May 21, 1986; 51 FR 44287, Dec. 9, 1986; 53 FR 33814, Sept. 1, 1988; 54 FR 36030, Aug. 31, 1989; 54 FR 40115, Sept. 29, 1989]

§ 1002.3 Updating user fees.

(a) *Update.* Each fee established in this part shall be updated in accordance with this section annually.

(b) *Publication and effective dates.* Updated fees shall be published in the FEDERAL REGISTER and shall become effective 30 days after publication.

(c) *Payment of fees.* Any person submitting a filing for which a fee is established shall pay the fee in effect at the time of the filing.

(d) *Method of updating fees.* Each fee shall be updated by updating the cost components comprising the fee. Cost components shall be updated as follows:

(1) Direct labor costs shall be updated by multiplying base level direct labor costs by percentage changes in average wages and salaries of Commis-

sion employees. Base level direct labor costs are direct labor costs determined by the Commission's FY 1983-84 User Fee Cost Study. The base period for measuring changes shall be April 1984.

(2) Operations overhead shall be developed each year on the basis of current relationships existing on a weighted basis, for indirect labor applicable to the first supervisory work centers directly associated with user fee activity. Actual updating of operations overhead will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead costs.

(3)(i) Office general and administrative costs shall be developed each year on the basis of current level costs, i.e., dividing actual office general and administrative costs for the current fiscal year by total office costs for the Offices and Bureaus directly associated with user fee activity. Actual updating of office general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead and current operations overhead costs.

(ii) Commission general and administrative costs shall be developed each year on the basis of current level costs; i.e., dividing actual Commission general and administrative costs for the current fiscal year by total agency expenses for the current fiscal year. Actual updating of Commission general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead, operations overhead and office general and administrative costs.

(4) Publication costs shall be adjusted on the basis of known changes in the costs applicable to publication of material in the FEDERAL REGISTER or ICC Register.

(e) *Rounding of updated fees.* Updated fees shall be rounded in the following manner: (1) Fees between \$1-\$30 will be rounded to the nearest \$1; (2) fees between \$30-\$100 will be rounded to the nearest \$10; (3) fees between \$100-\$999 will be rounded to the nearest \$50; and (4) fees above \$1,000 will

be rounded to the nearest \$100. (This rounding procedure excludes copying, printing and search fees.)

[49 FR 18494, May 1, 1984, as amended at 52 FR 46483, Dec. 8, 1987]

PART 1003—LIST OF FORMS

Sec.

- 1003.1 General information.
- 1003.2 Motor and water carrier, broker, and household goods freight forwarder forms.
- 1003.3 Insurance and surety bond forms.
- 1003.4 Forms for issuance of securities and assumption of obligations.

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c), 49 U.S.C. 10321.

§ 1003.1 General information.

(a) The forms listed in this part are prescribed for various applications under the Interstate Commerce Act and the Commission's regulations contained in Subchapters A and B of this chapter.

(b) Other printed forms are prescribed in the Commission's regulations governing accounts, records, and reports contained in Subchapter C of this chapter.

(c) All prescribed forms listed in this part and Subchapter C include instructions for their completion.

(d) Copies of all prescribed forms except insurance forms are available upon request from the Office of the Secretary, Publications Unit, Interstate Commerce Commission, Washington, DC 20423.

[50 FR 40028, Oct. 1, 1985]

§ 1003.2 Motor and water carrier, broker, and household goods freight forwarder forms.

BOC-3 Designation of Agent for Service of Process.

This form is required to be filed by all motor carriers and brokers prior to issuance of operating authority. See 49 U.S.C. 10330(b).

Cross Reference: 49 CFR Part 1044.

OP-1 (Rev. 12/83).

Application for motor carrier authority, broker or household goods freight forwarder authority, and water

Interstate Commerce Commission

Part 1180

to [party to whom documents should be returned].

A short summary of the document to appear in the index follows: [a short summary as described in 1177.4(a)].

Very truly yours,

[Signature of an executive officer of one of the parties, their attorney, or representative in fact.]

§ 1177.5 Administrative procedure.

(a) At the time of filing of a document with the Commission for recordation, a consecutive number will be stamped upon the original document and upon the copies or the counterparts, with the date and hour of the filing. A notation acknowledging that the document has been filed pursuant to 49 U.S.C. 11303 will be made. The original document, along with the notation, will be returned to the party named in the transmittal letter and a copy or counterpart will be retained by the Commission. For a secondary document, the number assigned will be the recordation number of the primary document plus the next available letter suffix.

(b) The Commission will maintain an index for public use as required by 49 U.S.C. 11303(b). There will be an index of parties to documents recorded at the Commission in alphabetical order by the party's name. If requested by the letter of transmittal, this index will also be amended to reflect an assignment under the name of the party other than the assignor or assignee to the document. There will also be an index of documents by number, which will list secondary documents referenced to the primary ones. The indexes will contain the pertinent information furnished by the parties in the transmittal letter.

(c) The Commission cannot judge the validity of documents, nor judge the status of encumbrances to property as reflected by documents recorded at the Commission. The public is welcome to research the records or use an agent or attorney to do so, provided that Commission rules concerning handling of the documents are respected.

(d) The public should note that filing documents with the Commission

is discretionary and encumbrances exist which are not on file with the Commission.

PARTS 1178-1179—[RESERVED]

PARTS 1180-1189—COMBINATIONS AND OWNERSHIP

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

Subpart A—General Acquisition Procedures

Sec.

- 1180.0 Scope and purpose.
- 1180.1 General policy statement for merger or control of at least two Class I railroads.
- 1180.2 Types of transactions.
- 1180.3 Definitions.
- 1180.4 Procedures.
- 1180.5 [Reserved]
- 1180.6 Supporting information.
- 1180.7 Market analyses.
- 1180.8 Operational data.
- 1180.9 Financial information.

Subpart B—Acquisition Procedures for Lines of Railroads in Reorganization

- 1180.20 Types of transactions.
- 1180.21 Identifying information.
- 1180.22 Traffic data.
- 1180.23 Operational data.
- 1180.24 Financial information.
- 1180.25 Procedures.
- 1180.26 Definitions.

Subpart C—Forced Sale Procedures for Bankrupt Railroad Lines

- 1180.40 Purpose and scope.
- 1180.41 Submission and contents of offer.
- 1180.42 Commission's 15 day determination.
- 1180.43 Agreement between the parties.
- 1180.44 Failure to reach an acquisition agreement.
- 1180.45 Requests to set the terms.
- 1180.46 Multiple offer proceedings.
- 1180.47 Transmission of the Commission's prescribed terms to the court.
- 1180.48 Special provisions concerning these forced sale proceedings.
- 1180.49 Definitions for Subpart C.

AUTHORITY: 49 U.S.C. 10321, 10505, 10903-10906, 11341, 11343-11346; 5 U.S.C. 553 and 559; 45 U.S.C. 904 and 913.

Subpart A—General Acquisition Procedures

SOURCE: 47 FR 9844, Mar. 8, 1982, unless otherwise noted. Redesignated at 47 FR 49592, Nov. 1, 1982.

§ 1180.0 Scope and purpose.

These regulations set out the information to be filed and the procedures to be followed in control, merger, acquisition, lease, trackage rights, and any other consolidation transaction involving more than one railroad that is initiated under 49 U.S.C. 11343. Section 1180.2 separates these transactions into four types: *Major*, *significant*, *minor*, and *exempt*. The informational requirements for these types of transactions differ. Before an application is filed, the designation of type of transaction may be clarified or certain of the information required may be waived upon petition to the Commission. This procedure is explained in § 1180.4. The required contents of an application are set out in §§ 1180.6 (general information supporting the transaction), 1180.7 (competitive and market information), 1180.8 (operational information) and 1180.9 (financial data). *Major* and *significant* applications must contain all of the information required in §§ 1180.6 through 1180.9. The informational requirements for a *minor* application are more limited and are set out in §§ 1180.6 and 1180.8. Procedures (including time limits, filing requirements, participation requirements, and other matters) are contained in § 1180.4. Index I lists all exhibits and indicates the type of application for which the exhibit is required. Index II is a table of contents of this subpart. All applicants must comply with the Commission's Rules of General Applicability, 49 CFR Parts 1100-1129, unless otherwise specified. These regulations may be cited as the Railroad Consolidation Procedures.

§ 1180.3 General policy statement for merger or control of at least two Class I railroads.

(a) *General.* The Interstate Commerce Commission encourages private industry initiative that leads to the rationalization of the nation's rail facili-

ties and reduction of its excess capacity. One means of accomplishing these ends is rail consolidation. However, the Commission does not favor consolidations through the exercise of managerial and financial control if the controlling entity does not assume full responsibility for carrying out the controlled carrier's common carrier obligation to provide adequate service upon reasonable demand. Furthermore, the Commission does not favor consolidations that substantially reduce the transport alternatives available to shippers unless there are substantial and demonstrable benefits to the transaction that cannot be achieved in a less anticompetitive fashion. Our analysis of the competitive impacts of a consolidation is especially critical in light of the Congressionally mandated commitment to give railroads greater freedom to price without regulatory interference.

(b) *Consolidation criteria.* The Commission's consideration of the merger or control of at least two class I railroads is governed by the criteria prescribed in 49 U.S.C. 11344 and by the rail transportation policy set forth in 49 U.S.C. 10101a.

(1) Section 11344 directs the Commission to approve consolidations which are consistent with the public interest. In examining a proposed transaction, the Commission must consider, at a minimum:

- (i) The effect on the adequacy of transportation to the public;
- (ii) The effect of including, or failing to include, other rail carriers in the area involved in the proposed transaction;
- (iii) The total fixed charges that would result;
- (iv) The interest of affected carrier employees; and
- (v) The effect on competition among rail carriers in the affected region.

(2) The Commission must also consider the impact of any transaction on the quality of the human environment and the conservation of energy resources.

(c) *Public interest considerations.* In determining whether a transaction is in the public interest, the Commission performs a balancing test. It weights the potential benefits to applicants

and the public against the potential harm to the public. The Commission will consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation that would result in less potential harm to the public.

(1) *Potential benefits.* Both the consolidated carrier and the public can benefit from a consolidation if the result is a financially sound competitor better able to provide adequate service on demand. This beneficial result can occur if the consolidated carrier is able to realize operating efficiencies and increased marketing opportunities. Since consolidations can lead to a reduction in redundant facilities and thereby to an increase in traffic density on underused lines, operating efficiencies may be realized. Furthermore, consolidations are the only feasible way for rail carriers to enter many new markets other than by contractual arrangement, such as for joint use of rail facilities or run-through trains. In some markets where there is sufficient existing rail capacity the construction of new rail line is prohibitively expensive and does not represent a feasible means of entry into the market.

(2) *Potential harm.* There are two potential results from consolidations which would ill serve the public—reduction of competition and harm to essential services. In analyzing these impacts, we must consider, but are not limited by, the policies embodied in antitrust laws.

(i) *Reduction of competition.* If two carriers serving the same market consolidate, the result would be the elimination of the competition between the two. Even if the consolidating carriers do not serve the same market, there may be a lessening of potential competition in other markets. While the reduction in the number of competitors serving a market is not in itself harmful, a lessening of competition resulting from the elimination of a competitor may be contrary to the public interest. The Commission recognizes that rail carriers face not only intramodal competition, but also intermodal competition from motor and water carriers. The Commission's competitive analysis depends on the relevant

market(s). In some markets the Commission's focus will be on the preservation of effective intermodal competition, while in other markets (such as long-haul movements of bulk commodities) effective intramodal competition may also be important.

(ii) *Harm to essential service.* Consolidations often result in shifts of market patterns. Sometimes the carrier losing its share of the market may not be able to withstand the loss of traffic. In assessing the probable impacts, the Commission's concern is the preservation of essential services, not the survival of particular carriers. A service is essential if there is a sufficient public need for the service and adequate alternative transportation is not available.

(d) *Conditions.* (1) The Commission has broad authority to impose conditions on consolidations, including those that might be useful in ameliorating potential anticompetitive effects of a consolidation. However, the Commission recognizes that conditions may lessen the benefits of a consolidation to both the carrier and the public. Therefore, the Commission will not normally impose conditions on a consolidation to protect a carrier unless essential services are affected and the condition: (i) is shown to be related to the impact of the consolidation; (ii) is designed to enable shippers to receive adequate service; (iii) would not pose unreasonable operating or other problems for the consolidated carrier; and (iv) would not frustrate the ability of the consolidated carrier to obtain the anticipated public benefits. Moreover, the Commission believes that indemnification is ordinarily not an appropriate remedy in consolidation proceedings. Indemnification conditions can be anticompetitive by requiring the consolidated carrier to subsidize carriers who are no longer able to compete efficiently in the marketplace.

(2) As of July 1, 1982, Conditions previously imposed are revoked unless the parties to specific consolidation proceedings demonstrate a public interest in continuing the Conditions in those proceedings.

(e) *Inclusion of other carriers.* The Commission will consider requiring inclusion of another carrier as a condi-

tion to approval only where there is no other reasonable alternative for providing essential services, the facilities fit operationally into the new system, and inclusion can be accomplished without endangering the operational or financial success of the new company.

(f) *Labor protection.* The Commission is required to provide applicants' employees affected by a consolidation with adequate protection. Similarly situated employees on the applicants' system should be given equal protection. Therefore, absent a negotiated agreement, the Commission will provide for protection at the level mandated by law (49 U.S.C. 11347), unless it can be shown that because of unusual circumstances more stringent protection is necessary to provide employees with a fair and equitable arrangement. The Commission will review negotiated agreements to assure fair and equitable treatment of affected employees.

(g) *Cumulative impacts and crossover effects.* The Commission recognizes that events can occur during its consideration of a consolidation that can have an effect on various of the concerned parties. However, the Commission is mindful of the need to meet its statutory deadlines and make timely administratively final decisions. Therefore, the Commission will not reopen pending proceedings in order to assess the impact of potential or hypothetical combinations or transactions. The proper forum for considering cumulative impacts and crossover effects is in a later proceeding. In this manner, consideration will be limited to the impacts of transactions which have already been approved and are, therefore, reasonably certain to occur. Furthermore, the Commission will have the benefit of its findings from the prior proceeding to identify more precisely the impacts of that transaction. Proceedings will remain manageable in scope and size, statutory time limits will be met, and all parties will be assured of timely, administratively final decisions.

(h) *Public participation.* To assure a fully developed record on the impacts of a proposed railroad consolidation, the Commission encourages public

participation from Federal, State, and local government departments and agencies, affected shippers and carriers, and other interested persons.

[47 FR 9844, Mar. 8, 1982, as amended at 47 FR 11376, Mar. 19, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982.]

§ 1180.2 Types of transactions.

Transactions proposed under 49 U.S.C. 11343 involving more than one common carrier by railroad are of four types: *Major, significant, minor, and exempt.*

(a) A *major* transaction is a control or merger involving two or more class I railroads.

(b) A *significant* transaction involves at least one class I railroad, acting together with one or more other class I or class II railroads, in a major market extension. It is of regional or national transportation significance as defined in 49 U.S.C. 11345.

(c) A *minor* transaction is one which involves more than one railroad and which is not a *major, significant, or exempt* transaction.

(d) A transaction is *exempt* if it is within one of the seven categories described below. The Commission has found that its prior review and approval of these transactions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a; and is of limited scope or unnecessary to protect shippers from market abuse. See 49 U.S.C. 10505. A notice must be filed to use one of these class exemptions. The procedures are set out in § 1180.4(g). These class exemptions do not relieve a carrier of its statutory obligation to protect the interests of employees. See 49 U.S.C. 10505(g)(2) and 11347. The enumeration of the following categories of transactions as exempt does not preclude a carrier from seeking an exemption of specific transactions not falling into these categories.

(1) Acquisition of a line of railroad which would not constitute a major market extension where the Commission has found that the public convenience and necessity permit abandonment.

(2) Acquisition or continuance in control of a nonconnecting carrier or

one of its lines where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a class I carrier.

(3) Transactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

(4) Renewal of leases and any other matters where the Commission has previously authorized the transaction, and only an extension in time is involved.

(5) Joint projects involving the relocation of a line of railroad which does not disrupt service to shippers.

(6) Reincorporation in a different State.

(7) Acquisition of trackage rights and renewal of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are: (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings.

[47 FR 3844, Mar. 8, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982, and amended at 50 FR 15751, Apr. 22, 1985; 51 FR 24669, July 8, 1986.]

§ 1180.3 Definitions.

(a) *Applicant*. The parties initiating a transaction. Parties who are considered applicants, but for whom the information normally required of an applicant need not be submitted, are (1) in minor trackage rights applications, the transferor and (2) in responsive applications, a primary applicant.

(b) *Applicant carriers*. Applicant, all carriers related to the applicant, and all other carriers involved in the transaction. This does not include carriers who are involved in an existing trackage rights agreement with applicants.

(c) *Major market extension*. A major market extension is a transaction which may significantly increase competition by extending service into a new market, expanding service in a

currently served market when another carrier concurrently contracts its service to that market as part of the same transaction, or providing significantly more efficient and effective competitive service to a market presently being served. Criteria which can be used to determine if a railroad is proposing to provide a more competitive service to a currently served area include: (1) Creating a shorter route; (2) providing enhanced service capabilities (speed is not the only factor); (3) entering an interchange or market generating more than 5,000 cars per year or 5 percent of applicant's traffic; (4) filing the application as a condition of relief to a pending proceeding; and (5) permitting a carrier to become more competitive (extending its length of haul) See, *Burlington Northern, Inc.—Control & Merger—St. L.*, 354 I.C.C. 616, 617 (1978).

(d) *Petition for clarification*. A request that the Commission clarify the applicability of any part of these regulations to a particular situation or explain the type of material needed to comply with these regulations.

(e) *Petition for waiver*. A request that the Commission either dispense with material required by the regulations, or accept material in place of that required by these regulations.

(f) *Primary application*. A proposal for approval filed under 49 U.S.C. 11343 which begins a new proceeding and is not proposed either as a condition to or as an alternative to Commission approval of another pending application.

(g) *Railroad*. Any common carrier by railroad as defined in 49 U.S.C. 10102(18)-(19).

(h) *Responsive applications*. Applications filed in response to a primary application seeking affirmative relief either as a condition to or in lieu of the approval of the primary application. Responsive applications include inconsistent applications, inclusion applications, and any other affirmative relief that requires an application to be filed with the Commission (such as trackage rights, purchases, construction, operation, pooling, terminal operations, abandonment, etc.).

(i) *Transferee*. The transferee is:

§ 1180.4

- (1) The acquiring corporation in a control proceeding.
 - (2) The surviving corporation in a merger.
 - (3) The resulting corporation in a consolidation.
 - (4) The lessee in a lease.
 - (5) The purchaser in an acquisition, and
 - (6) The grantee of trackage rights in a trackage rights proceeding.
- (j) *Transferor*. The transferor is:
- (1) The corporation acquired in a control proceeding.
 - (2) The merging corporation in a merger.
 - (3) All corporations to be consolidated in a consolidation.
 - (4) The lessor in a lease.
 - (5) The seller in an acquisition, and
 - (6) The grantor of trackage rights in a trackage rights proceeding.

§ 1180.4 Procedures.

- (a) *General*. (1) The original and 20 copies of all documents shall be filed in *major* proceedings. The original and 10 copies shall be filed in *significant* and *minor* proceedings.
- (2) Each party to a proceeding shall choose a unique acronym of four letters or less for itself. It shall number each document filed in the proceeding consecutively, prefixed by its acronym.
- (3) Any document filed with the Commission (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. At any time, the Commission may require the submission of additional copies of any document previously filed by any party to the proceeding.
- (4) The Commission shall issue a list of all parties to the proceeding within 55 days of the application's acceptance in a *major* transaction, and within 45 days in a *significant* or *minor* transaction.
- (b) *Prefiling notification*. (1) Between 3 to 6 months prior to the proposed filing of an application in a *major* transaction, and 2 to 4 months prior to the proposed filing of an application in a *significant* transaction, applicant shall file a notice with the Commission. The notice shall:
- (i) Briefly describe the transaction,

49 CFR Ch. X (10-1-89 Edition)

- (ii) Indicate the year to be used for the impact analyses.
 - (iii) Indicate the approximate filing date of the application, and
 - (iv) Indicate why the transaction is *major* or *significant* (how a major market extension results).
- (2) The Commission will publish a notice in the *FEDERAL REGISTER* within 30 days of receipt of the applicant's notice. The publication shall contain:
- (i) A brief description of the transaction.
 - (ii) The year to be used for the impact analysis.
 - (iii) The approximate filing date.
 - (iv) A determination that the transaction is *major*, *significant*, or *minor*, and
 - (v) A statement of any additional information which must be filed with the application in order for the application to be considered complete.
- (3) A prefiling notice may be amended to indicate a change in the anticipated filing date.
- (c) *Application*. (1) The fee to file a primary application with the Commission under these procedures is set forth at 49 CFR 1002.2(f) (46) through (49). There is no filing fee for a directly related application filed by a party that filed the primary application. The fee for a directly related or responsive application filed by another party is set forth in 49 CFR 1002.2(f) (46) through (49). For finance-related exemption filed by a party, the fee is set forth in 49 CFR 1002.2(f) (46) through (49).
- (2) *Filing requirements*.
- (i) The original of all applications shall be signed in ink by the applicant, if an individual; by all partners, if a partnership; and if a corporation, association, or other similar form of organization, by its president, or such other executive officer having knowledge of the matters therein contained and duly designated for that purpose by the applicant. Applications shall be made under oath and shall contain an appropriate certification (if a corporation, by its secretary) showing that the affiant is duly authorized to verify and file the application. Any person controlling an applicant shall also sign the application.

(b) The application shall be filed with Secretary, Interstate Commerce Commission, Washington, DC 20423.

(iii) Each copy of the application shall conform in all respects to the original and shall be complete in itself except that the signature in the copies may be stamped or typed and the notarial seal may be omitted. In like manner, where certified copies of documents are filed with the application, conformed copies thereof, showing certification in stamped or typewritten form, will be sufficient to accompany the additional copies of the application.

(iv) All applications required to be filed with the Commission or served on designated persons shall include all exhibits, except as otherwise specifically noted. Information from other documents may be incorporated by reference in the application. However, the documents must have been filed with the Commission within three years prior to filing of the application, the information must be up to date, and applicant must be prepared to supply copies of this information to interested persons on specific request.

(v) The applicant shall submit such additional information to support its application as the Commission may require.

(vi) Applicant shall file concurrently all directly related applications, e.g., those seeking authority to construct or abandon rail lines, to issue securities, control motor carriers, obtain terminal operations, acquire trackage rights, et cetera.

(vii) The application shall contain a certificate of service indicating that all persons designated in § 1180.4(c)(5) have been served with a copy of the application.

(3) In a *major or significant* transaction, and in all responsive applications, all of the direct testimony of applicants, in the form of verified statements, shall be filed and served with each application.

(4) The application and all exhibits shall be considered part of the evidentiary record upon acceptance. Any portion of an application and exhibits will remain subject to motions to strike. However, no motion need be made to have the application and exhibits ad-

mitted to the evidentiary record. If a *major or significant* transaction is designated for oral hearing the presiding Administrative Law Judge shall have discretion in extraordinary circumstances to allow for the presentation of oral or written direct testimony not previously submitted with the application.

(5) Service. The applicant shall serve a conformed copy of an application filed under these procedures by first-class mail upon:

(i) The Governor (or Executive Officer), Public Service Commission, and the Department of Transportation of each State in which any part of the properties of the applicant carriers involved in the proposed transaction is situated;

(ii) The Secretary of the United States Department of Transportation (Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 406 Seventh Street, SW., Washington, DC 20590).

(iii) The Attorney General of the United States;

(iv) The Federal Trade Commission; and

(v) In *major or significant* transactions, all persons requesting a copy after the pre-filing notice is published in the *Federal Register*.

(6) Application format. (i) The application shall be in the same sequence as the information is requested in these procedures, and shall be numbered to correspond to the numbering in the procedures.

(ii) If any material required in the application would lend itself to being placed in an appendix, this should be done. The appendix and application shall be tabulated and cross-referenced in an index for ease in locating and referring to the information. The appendixes shall be in the same sequence as the information required by these procedures. If certain information required in the application is not applicable, provide an explanation. The application should be bound, and it may be bound in more than one volume. If an application is more than one volume, the cover of each volume should be in a different color. The pages in each volume shall begin with 1, and be sequentially numbered.

(iii) If a question arises regarding an interpretation of the information or format to be included in the application, the party may contact the Commission's Section of Finance for assistance. It will provide informal opinions and interpretations which are not binding on the Commission.

(iv) All filing, service, or other requirements of these procedures must be complied with when filing the application. Copies of the application filed with the Commission shall be marked in red "Railroad Consolidation Application" on the transmittal envelope or package.

(v) The application shall conform to the typographical specifications of § 1104.2.

(7) Acceptance or rejection of an application.

(i) The Commission shall accept a complete application no later than 30 days after the application is filed with the Commission by publishing a notice in the *FEDERAL REGISTER*. A complete application contains all information for all applicant carriers required by these procedures, except as modified by advance waiver. The publication shall indicate the applicable time limits for processing the application. (These are the time limits of 49 U.S.C. 11345(b) for a *major* transaction, 49 U.S.C. 11345(c) for a *significant* transaction, and 49 U.S.C. 11345(d) for a *minor* transaction.)

(ii) The Commission shall reject an incomplete application by serving a decision no later than 30 days after the application is filed with the Commission. The decision shall explain specifically why the application was incomplete. A revised application may be submitted, incorporating portions of the prior application by reference. The resubmission or refiling of an application shall be considered a *de novo* filing for the purpose of computation of the time periods, provided that the resubmitted application is accepted as complete.

(8) The application must present a *prima facie* case. Applicants can fail to meet their burden of proof and thus not present a *prima facie* case either by (i) disclosing facts that, even if construed in their most favorable light, are insufficient to support a finding

that the proposal is consistent with the public interest, or by (ii) disclosing facts that affirmatively demonstrate that the proposal is not in the public interest. See Ex Parte No. 282 (Sub-No. 3A), *Railroad Consolidation Procedures Expedited Processing*, 363 I.C.C. 767 (1980).

(d) *Response to application.* (1) Written comments.

(i) *Time to file.* (A) Written comments on a *major* transaction must be filed no later than 45 days after an application is accepted.

(B) Written comments on *significant* or *minor* transactions must be filed within 30 days of the application's acceptance.

(ii) *Service.* Written comments shall be concurrently served by first-class mail on:

(A) The applicants (at each address given in the application).

(B) The United States Secretary of Transportation.

(C) The Attorney General of the United States, and

(D) All parties of record within 10 days of service of the service list by the Commission.

(iii) *Contents.* Written comments must contain:

(A) The docket number and title of the proceeding.

(B) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made.

(C) The commenting party's position (in support, opposition, or undetermined).

(D) If the commenting party intends to participate formally in a proceeding or merely comment upon the proposal.

(E) If desired, a request for an oral hearing with reasons supporting this request. The request must indicate the disputed material facts that can only be resolved at a hearing.

(F) A list of all information sought to be discovered from applicant carriers.

(G) A detailed statement of the issues in *major* and *significant* transactions reflecting the relevant underlying statutory criteria, policy statement (for *major* transactions), and antitrust policy which the Commission must consider in the proceeding.

(H) An initial list of specific protective conditions sought by *nonrailroads* in *major* and *significant* transactions.

(I) The following information by *railroads* filing written comments in *major*, and *significant* transactions:

(1) Any existing preferential solicitation agreements.

(2) A list of all run-through train operations.

(3) An initial list of specific protective conditions sought and a statement concerning whether the commenting railroad intends to file responsive applications, along with a description of the proposed transactions. This will be considered a prefiling notice without which the Commission will not entertain responsive applications.

(iv) *Party*. All persons who file timely written comments shall be a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed.

(2) The Secretary of Transportation and Attorney General of the United States shall file written comments with the Commission within 60 days of the date of acceptance of the application in a *major* transaction. For *significant* and *minor* transactions these comments are due within 45 days of the date of acceptance of the application. These comments shall comply with paragraphs (d)(1)(ii) and (d)(1)(iii) of this section as to service and contents.

(3) A second list of protective conditions shall be filed with the Commission within 75 days of acceptance of the application in a *major* transaction, and within 60 days of acceptance of the application in a *significant* transaction. It shall be concurrently served by first-class mail on all parties of record. The second list of protective conditions shall modify the first list based upon changing conditions, such as protective conditions sought by other parties to the proceeding. Parties to the proceeding shall not be permitted to seek any protective conditions not contained in the second list of protective conditions. This does not preclude refinements in conditions sought, particularly when stipulations to conditions are reached.

(4) Responsive applications.

(i) All responsive applications in *major* transactions shall be filed 90 days, and in *significant* transactions 60 days, after acceptance of the primary application. No responsive applications shall be permitted to *minor* transactions.

(ii) Responsive applications which are not *major* are presumed to be *significant* transactions.

(iii) Responsive applications shall comply as fully as possible with appropriate Commission regulations. Extensions of time for filing are not permitted. The filing of an incomplete application, coupled with an extension of time to complete the application, may be permitted if authorized by the Commission in advance.

(iv) Any petitions for waiver, clarification, extension of time, or for leave to file an incomplete application, or to rebut the presumption of a *significant* transaction, must be filed in advance of the filing of the responsive application (at least 45 days in advance in *major* transactions and 30 days in *significant* transactions).

(v) Each responsive application filed and accepted (if required) is considered consolidated with the primary application.

(e) *Evidentiary proceeding*. (1) The Commission may order an oral public hearing, a hearing by written submissions, or another kind of evidentiary proceeding. The determination will generally be made on the basis of the needs indicated by the written comments.

(2) The evidentiary proceeding will be completed:

(i) In 24 months (after the primary application is accepted) for a *major* transaction,

(ii) In 180 days for a *significant* transaction, and

(iii) In 105 days for a *minor* transaction;

(3) A final decision on the primary application and on all consolidated cases will be issued;

(i) In 180 days (after the conclusion of the evidentiary proceeding) for a *major* transaction,

(ii) In 90 days for a *significant* transaction, and

(iii) In 45 days for a *minor* transaction.

(4) The Secretary of Transportation may propose modifications to any transaction and shall have standing to appear before the Commission in support of any such proposed modification.

(f) *Waiver or clarification.* (1) Upon petition of a prospective applicant, the Commission may waive or clarify a portion of these procedures. A petition to waive all of the procedures will not be entertained.

(2) Except as otherwise provided in paragraph (d)(4)(iv) of this section, petitions for waiver or clarification must be filed at least 45 days before the application is filed.

(3) No replies to a petition for waiver will be permitted, except where a proceeding involving the same parties and a related transaction is pending before us.¹ When a reply is permitted, the petition shall be served by first-class mail on all parties to the pending proceedings, with a reply due within 10 days of service. Replies to a petition for clarification shall be permitted within 10 days of the petition's filing.

(4) A waiver or clarification granted to any applicant in a proceeding shall apply to any other party to the proceeding unless otherwise indicated.

(5) All petitions for waiver or clarification must specify the sections for which waiver or clarification is sought and give the specific reasons why each waiver or clarification is necessary.

(g) *Notice of exemption.* (1) To qualify for an exemption under § 1180.2(d), a railroad must file a verified notice of the transaction with the Commission at least one week before the transaction is consummated indicating the proposed consummation date. Before a notice is filed, the railroad shall obtain a docket number from the Commission's Office of the Secretary.

(i) The notice shall contain the information required in § 1180.5(a)(1)(i)-(iii), (a)(5)-(6), and (a)(7)(ii), and indicate the level of labor protection to be imposed.

(ii) The Commission shall publish a notice in the *FEDERAL REGISTER* within 30 days of the filing of the notice of exemption. The publication will indi-

cate the labor protection required. If the notice of exemption contains false or misleading information which is brought to the Commission's attention, the Commission shall summarily revoke the exemption for that carrier and require divestiture.

(iii) Other exemptions that may be relevant to a proposal under this provision are 49 CFR Part 1150, Subpart D for transactions under 49 U.S.C. 10901, and 49 CFR Part 1175, for securities.

(2)(i) To qualify for an exemption under § 1180.2(d)(7) (acquisition or renewal of trackage rights agreements), in addition to the notice, the railroad must file a caption summary suitable for publication in the *FEDERAL REGISTER*. The caption summary must be in the following form:

INTERSTATE COMMERCE COMMISSION

Notice of Exemption

Finance Docket No.

(1)—Trackage Rights—(2)

(2) (3) to grant (4) trackage rights to (1) between (5). The trackage rights will be effective on (6).

This notice is filed under § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Commission,

James H. Bayne,

Secretary.

The following key identifies the information symbolized in the summary.

(1) Name of the tenant railroad.

(2) Name of the landlord railroad.

(3) If an agreement has been entered use "has agreed", but if an agreement has been reached but not entered use "will agree."

(4) Indicate whether "overhead" or "local" trackage rights are involved.

(5) Describe the trackage rights.

(6) State the date the trackage rights agreement is proposed to be consummated.

(ii) The Commission will publish the caption summary in the *FEDERAL REGISTER* within 20 days of the date that it is filed with the Commission. The filing of a petition to revoke under 49 U.S.C. 10505(d) does not stay the effectiveness of an exemption.

(3) The railroad must certify that it has complied with the notice requirements of § 1195.11.

¹See *Itel Corp.—Control-Green Bay and W. R. Co.*, 354 I.C.C. 232, 233 (1978).

(h) *Official notice.* In connection with any application or request for relief under these procedures, the Commission may take official notice of any or all of the following information. These data will be presumed valid unless discredited by any party. A party relying on information to be noticed officially shall list the information. Upon request, the party shall make the official notice material available. Any party is free to challenge the relevance or application of any such data, or the weight that should be accorded it.

(1) Annual ICC Form R-1 Reports submitted by rail carriers.

(2) Quarterly Commodity Statistics submitted by rail carriers.

(3) ICC Monthly Labor Statistics.

(4) Quarterly Financial Statements of Rail Carriers.

(5) All other reports submitted to the ICC under oath.

(6) Annual 1-percent Waybill Sample.

(7) Federal Reserve Board Production Statistics.

(8) AAR compilations of bad order ratios, equipment ownership and repair statistics, and freight car order figures.

(i) *Untimely decision.* If the Commission does not issue a timely decision that is a final action under 49 U.S.C. 10327, it will send written notice to Congress that the decision was not issued and the reasons why it was not issued.

[47 FR 9844, Mar. 8, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982 and amended at 49 FR 15088, Apr. 17, 1984; 50 FR 15751, Apr. 22, 1985; 51 FR 4928, Feb. 10, 1986; 51 FR 25207, July 11, 1986; 52 FR 46484, Dec. 8, 1987]

§ 1180.6 [Reserved]

§ 1180.6 Supporting information.

(a) All applications filed under 49 U.S.C. 11343 shall show in the title the names of the applicants and the nature of the proposed transaction. Beneath the title indicate the name, title, business address, and telephone number of the person(s) to whom correspondence with respect to the application should be addressed. The following information shall be included in all applications:

(1) A description of the proposed transaction, including appropriate references to any supporting exhibits and statements contained in the application and discussing the following:

(i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

(ii) The proposed time schedule for consummation of the proposed transaction.

(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

(iv) The nature and amount of any new securities or other financial arrangements.

(2) A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including:

(i) The effect of the transaction on inter- and intramodal competition, including a description of the relevant markets (see § 1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

(ii) The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

(iii) The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.

(iv) The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.

(v) The effect of the proposed transaction upon applicant carriers' em-

employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

(vi) The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11344.

(3) Any other supporting or descriptive statements applicants deem material.

(4) An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Commission. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.¹

(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

(6) Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Commission.

(7) Explanation of the transaction.

(i) Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).

(ii) Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.² In addition,

¹An opinion of counsel is not required in a control transaction for the party sought to be controlled, or in a responsive application for the party against whom relief is sought.

²A final signed contract or agreement need not be filed with a responsive application. However, a draft contract or agreement should be submitted containing the significant terms proposed.

parties to exempt trackage rights agreements and renewal of agreements described at § 1180.2(d)(7) must submit an original and one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

(iii) If a consolidation or merger is proposed, indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed, or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of capital stock and other securities to be issued.

(iv) Court order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.

(v) State whether the property involved in the proposed transaction includes all the property of the applicant carriers and, if not, describe what property is included in the proposed transaction.

(vi) Briefly describe the principal routes and terminal of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.

(vii) State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.

(8) Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR Part 1105. In major and significant transactions, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Commission's Energy and Environment Branch for the proper format of the environmental report.

(9) Energy data (exhibit 5). Submit information and data with respect to

energy consumption prepared in accordance with 49 CFR Part 1105.

(b) Submit the following information in a *major or significant* transaction:

(1) Form 10-K (exhibit 6). Submit applicant carriers' most recent filing with the Securities and Exchange Commission (SEC) under 17 CFR 249.310. This shall not be incorporated by reference, and shall be updated with any Form 10-K subsequently filed with the SEC over the duration of the proceeding.

(2) Form S-14 (exhibit 7). Submit applicant carriers' most recent filing with the SEC under 17 CFR 239.23. This shall not be incorporated by reference, and shall be updated with any Form S-14 subsequently filed with the SEC over the duration of the proceeding.

(3) Change in control (exhibit 8). Indicate any change in ownership, control, or officers not indicated in the most recent annual report Form R-1.

(4) Annual reports (exhibit 9). Submit applicant carriers' two most recent annual reports to stockholders. This shall not be incorporated by reference, and shall be updated with any annual or quarterly report to stockholders issued over the duration of the proceeding.

(5) Issues (exhibit 10). Submit a discussion of any other issues relevant to the transaction.

(6) Corporate chart (exhibit 11). Submit a corporate chart indicating all relationships between applicant carriers and all affiliates and subsidiaries and also companies controlling applicant carriers directly, indirectly or through another entity (each chart shall indicate the percentage ownership of every company on the chart by any other company on the chart). For each company include a statement indicating (i) any common officers or directors for every entity on the chart (with reference to the Commission decision by docket number and date authorizing the holding of such positions, or an explanation of why such authorization was not required) and (ii) whether each company is a non-carrier or carrier (by railroad, motor, or water, including the number of any Commission certificate or permit, and

the docket number of any proceeding pending before the Commission). Such information may be referenced through notes to the chart.

(7) If applicant is not a carrier, indicate (i) the type of business in which it is engaged, (ii) the length of time so engaged, and (iii) its present and prospective activities which have or may have a relation to transportation subject to 49 U.S.C. Subtitle IV.

(8) Indicate whether there are any direct or indirect intercorporate or financial relationships at the time the application is filed, not disclosed elsewhere in the application, through holding companies, ownership of securities, or otherwise, between (i) applicant carriers and any carrier or person affiliated with any carrier or (ii) a person affiliated with applicant carriers and any carrier or person affiliated with any other carrier. Indicate the nature and extent of such relationships, if they exist, and, if an applicant carrier owns securities of a carrier subject to 49 U.S.C. Subtitle IV provide the carrier's name, a description of securities, par value of each class of securities held, and the applicant carriers' percentage of total ownership.

[47 FR 9644, Mar. 8, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982, and amended at 50 FR 15751, Apr. 22, 1985]

§ 1180.7 Market analyses.

Impact analyses (exhibit 12). In *major and significant* transactions applicants shall submit analyses of the impacts of the proposed transaction—both adverse and beneficial—on inter- and intramodal competition for freight surface transportation in the regions affected by the transaction and on the provision of essential services by applicants and other carriers. An impact analysis should include underlying data, a study of the implications of that data, and a description of the resulting likely effects of the transaction on transportation alternatives available to the shipping public. Each aspect of the analysis should specifically address significant impacts as they relate to the statutory criteria (49 U.S.C. 11344(b) or (d), essential services, and competition). The Commission may identify particular mar-

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GWRC EXHIBIT 16

TROUTMAN, SANDERS, LOCKERMAN & ASHMORE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

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ATLANTA, GEORGIA 30303-1810

404/558-8000

CABLE: HAESTAO

TELECOPIER: 404-551-0489

WRITER'S DIRECT DIAL NUMBER

404-558-2107

JOHN R. MOLM

March 13, 1990

Ms. Noreta R. McGee, Secretary
Interstate Commerce Commission
ATTN: Mail Room (Room #1324)
12th Street and Constitution Avenue, N. W.
Washington, D. C. 20423

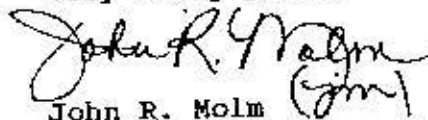
RE: Finance Docket No. 31626 - Notice of Exemption

Dear Ms. McGee:

Enclosed for filing are the original and ten (10) copies of the Notice of Exemption and a filing fee check in the amount of \$600.00. You will note there are twenty (20) additional copies of the Map enclosed for your convenience.

Please acknowledge receipt of this letter on the extra copy and return it to me in the self-addressed, stamped envelope.

Very truly yours,


John R. Molm

JRM:jm

Enclosures

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 31626

NOTICE OF EXEMPTION

COMES NOW Great Walton Railroad Company, for purposes of this exemption d/b/a Hartwell Railroad Company, and, pursuant to 49 CFR §§ 1180.2(d)(2) and (d)(7), 1180.4(g) and 1180.6, hereby gives notice to the Commission that Hartwell Railroad Company will acquire the rail line owned and operated by Hartwell Railway Company between Bowersville and Hartwell, Georgia and, pending closing of the proposed transaction, will operate over the rail line owned by the Hartwell Railway Company pursuant to a trackage rights agreement.

The Great Walton Railroad Company currently owns and operates a rail line between Social Circle and Monroe, Georgia and operates, pursuant to a lease with Central of Georgia Railroad Company, a rail line between Covington and Machen, Georgia. See Finance Docket No. 31402, The Great Walton Railroad Company, Inc. -- Lease Exemption -- Central of Georgia Company's Line Between Machen and Covington, Georgia.

The Great Walton Railroad Company d/b/a Hartwell Railroad Company for purposes of this transaction proposes to acquire the assets of Hartwell Railway Company. Pending consummation of this transaction, the Great Walton Railroad Company d/b/a Hartwell Railroad Company proposes to provide rail transportation service to shippers located along the rail line from Hartwell to Bowersville, Georgia pursuant to a trackage rights agreement to be entered into between the parties on or before March 21, 1990. The acquisition of the assets will be consummated on or before April 30, 1990.

The purpose sought to be accomplished by the proposed transaction is to achieve improved operating economies and to maintain and improve service to shippers located along the rail line.

A map showing the location of the rail line is attached hereto. In addition, 20 unbound copies of the map are filed herewith.

Also enclosed herewith is a copy of a draft Assets Purchase Agreement (without the Exhibits attached thereto which are now in blank). This Asset Purchase Agreement will be finalized prior to closing. Applicant will file a copy of the trackage rights agreement upon the same being executed by the parties.

No employees of the Hartwell Railway Company are being replaced. They will remain as employees of the Great Walton Railroad Company d/b/a Hartwell ^{Railroad} Railway Company if they so choose. There will be no impact on the current employees of the Great Walton Railroad as a result of this transaction.

The following additional information is also provided:

Name of Applicant

Great Walton Railroad Company
d/b/a Hartwell Railroad Company
1801 North Cherokee
Social Circle, Georgia 30279
(404) 267-0070

Attorney

John R. Molm
127 Peachtree St., N.E.
Atlanta, Georgia 30303-1810

Name of Landlord Railroad

Hartwell Railway Company
Railroad and Jackson
Hartwell, Georgia 30643

Respectfully submitted,


John R. Molm

Dated: March 14, 1990

INTERSTATE COMMERCE COMMISSION

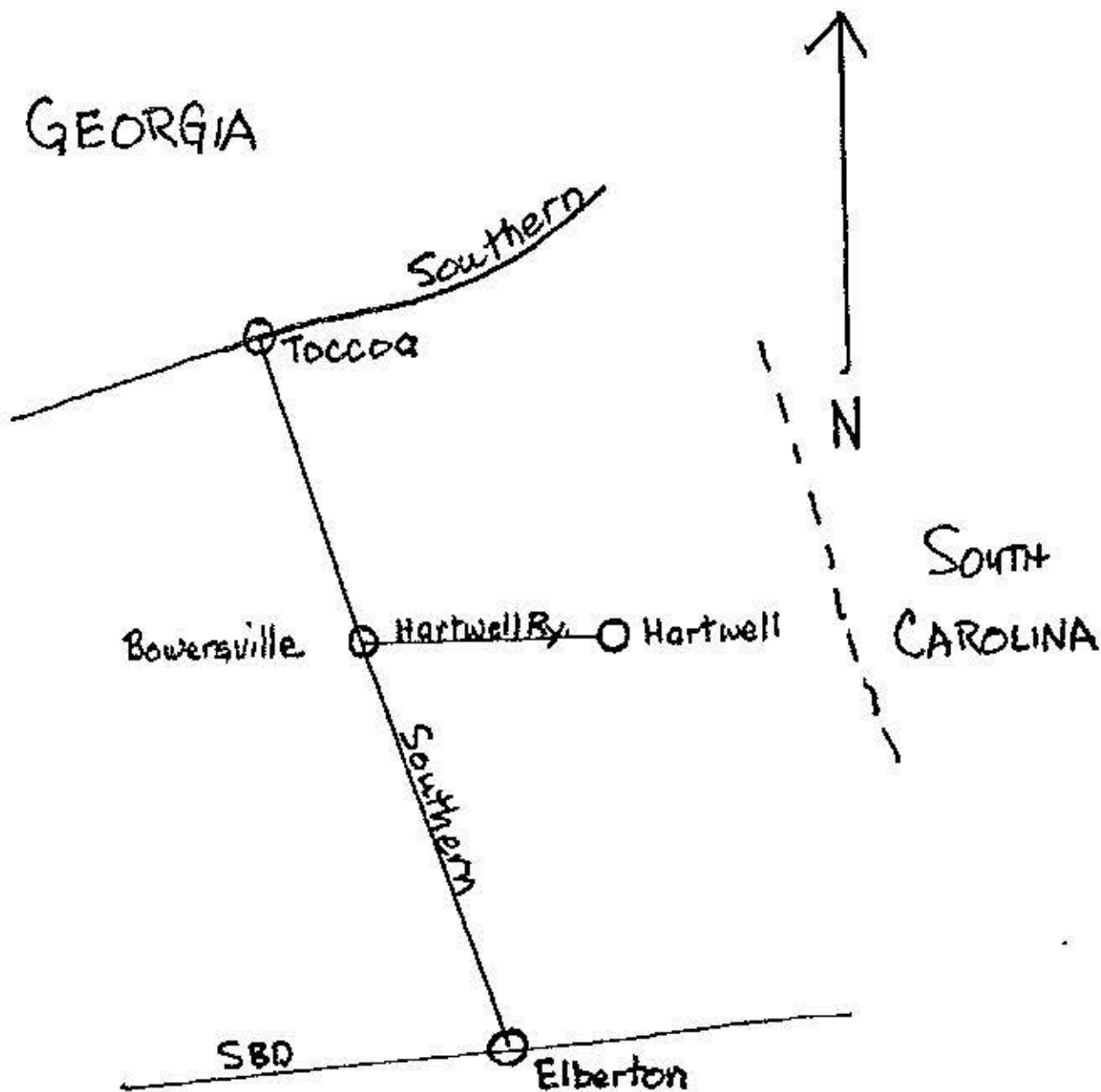
Notice of Exemption

Finance Docket No. 31626

Great Walton Railroad Company d/b/a
Hartwell Railroad Company --
Trackage Rights --
Hartwell Railway Company

The Hartwell Railway Company will agree to grant local trackage rights to Great Walton Railroad Company between Bowersville and Hartwell, Georgia, a distance of approximately 10.5 miles. The trackage rights will be effective on March 21, 1990.

This notice is filed under § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.



MAP BY MCLM
ALL RIGHTS
PROTECTED

TRACK AND OPERATING AGREEMENT

This TRACK AND OPERATING AGREEMENT (the "Agreement") is made and entered into as of the 21st day of March, 1990, by and between HARTWELL RAILWAY COMPANY, a Georgia railroad corporation ("Hartwell") and THE GREAT WALTON RAILROAD COMPANY, a Georgia railroad corporation ("Walton").

W I T N E S S E T H:

WHEREAS, Hartwell presently owns and operates rail service over a line of railroad running between Bowersville and Hartwell, Georgia shown on Exhibit A attached hereto and made a part hereof (the "Line"); and

WHEREAS, Walton and Hartwell are currently negotiating an Asset Purchase Agreement, pursuant to which Hartwell contemplates the sale of substantially all of its assets, including the Line, to Walton; and

WHEREAS, the parties hereto contemplate that Hartwell will lease its assets to Walton and Walton will conduct operations over the Line pursuant to a trackage rights agreement pending said purchase and sale of such assets; and

WHEREAS, in contemplation of entering into such trackage rights agreement and acquiring the Line pursuant to said Asset Purchase Agreement, Walton has filed Notice of Exemption with the Interstate Commerce Commission with respect to said trackage rights agreement and purchase of assets; and

WHEREAS, Walton and Hartwell desire to enter into this Agreement with respect to such trackage rights and other rights and obligations as set forth herein;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound hereunder, do hereby agree as follows:

1. Grant of Trackage Rights. Subject to the terms and conditions herein provided, Hartwell hereby grants to Walton the exclusive right to operate trains, locomotives, cars and equipment and to provide transportation service to any and all shippers with its own crews over the Line.

2. Appointment as Manager. Hartwell hereby appoints Walton as its exclusive manager to fulfill and perform the common carrier obligations of Hartwell during the term of this Agreement. During the term of this Agreement, Walton shall be authorized and directed to collect all operating revenues with respect to the operation of the Line and will assume and pay all operating expenses with respect thereto. If Hartwell receives any revenues for railroad services furnished during the term of this Agreement, Hartwell shall promptly remit the same to Walton. Walton shall be entitled to all revenue for pre-paid freight and freight in route on the Line on the date of this Agreement.

3. Maintenance. Hartwell agrees to provide up to Five Thousand Dollars (\$5,000.00) for cross ties, spikes and other materials necessary for the maintenance and repair of the Line during the term of this Agreement. To the extent the cost of materials necessary for the maintenance and repair of the Line exceeds Five Thousand Dollars (\$5,000.00), Walton may, but shall not be obligated to, acquire such materials at its own expense. Walton agrees to provide any and all labor required for the maintenance and repair of the Line (including associated track facilities and structures).

4. Lease of Equipment and Other Property. Hartwell hereby leases to Walton, and Walton leases from Hartwell, all of Hartwell's railroad equipment and other personalty and real property used with respect to the operation of the Line including, without limitation, the personalty and equipment listed on Exhibit B attached hereto and made a part hereof (the "Equipment"). The aggregate consideration for all of the rights granted to Walton hereunder shall be One Dollar (\$1.00) per month. Walton agrees to maintain the Equipment in its current operating condition and shall maintain insurance on such Equipment in such amounts mutually agreed upon by Walton and Hartwell.

5. Term. The term of this Agreement shall commence as of the 21st day of March, 1990 and shall continue until the acquisition of the Line by Walton or upon three (3) days prior written notice from Walton to Hartwell; provided, however, in the event the shareholders of Hartwell do not consent to the sale of the Line to Walton on or before April 1, 1990, Hartwell shall have the right to terminate this Agreement upon fifteen (15) days' prior written notice.

6. Excluded Liabilities. Hartwell and Walton hereby expressly acknowledge and agree that Walton has not assumed, and shall not assume, any obligations of Hartwell arising prior to the date of this Agreement except for operating agreements set forth on Exhibit C. Any and all obligations of Walton pursuant

to Sections 2 and 3 above shall terminate immediately upon the termination of this Agreement.

7. Indemnity. Except as set forth in Section 8 below, Walton shall indemnify and hold harmless Hartwell for loss, damage, injury or death resulting from or related to train operations over the Line unless said loss, damage, injury or death is the proximate result of the sole, joint, or concurrent negligence of Hartwell. Hartwell agrees to indemnify and hold harmless Walton for loss, damage, injury or death arising from the condition of the Line or from any act or omission of Hartwell, its employees or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation while on or near the Line including all spurs and sidetracks, unless said loss, damage, injury or death is the result of the sole negligence of Walton in the operation of trains over the Line.

8. Liabilities for Fire. It is understood by the parties hereto that inherent in the operations performed under this Agreement are risks of fire due to the operation of locomotives and the movement of steel wheels over steel rails. Accordingly, the parties agree as follows:

- (a) Hartwell assumes all responsibility for and agrees to bear all loss or damage to its property or property upon its premises or property of third parties adjoining the Line (except to the extent of insurance coverage provided by Walton pursuant to Section 4 above), arising from fire caused by Walton's operation over the Line including such fire caused loss or damage which may arise as a result of Walton's sole negligence.
- (b) Walton assumes all responsibility and agrees to bear all loss or damage to its property or rolling stock (whether owned or furnished by Walton but excluding the Equipment) arising from fire caused by Walton's operation over the Line.

9. Notices. All notices, demands, requests and other communications under this Agreement shall be in writing and properly given if delivered by hand to the party to whose attention it is directed when received, or delivery refused, or if sent, postage prepaid, by United States Registered or Certified Mail, return receipt requested, addressed as follows:

(a) If to Seller:

Hartwell Railway Company
Railroad and Jackson
Hartwell, Georgia 30643
Attn: President

With a copy to:

Robert E. Ridgway, Jr., Esq.
Robert E. Ridgway, Jr. Attorney-at-Law
Post Office Box 710
109 Carolina Street
Hartwell, Georgia 30643

(b) If to Purchaser:

The Great Walton Railroad Company
~~MONROE, GEORGIA 30655~~ P.O. BOX 711
~~MONROE, GEORGIA 30655~~ MONROE, GEORGIA 30655
Attn: President

With a copy to:

Troutman, Sanders, Lockerman & Ashmore
Suite 1600
One Ravinia Drive
Atlanta, Georgia 30346
Attn: Robert C. Marshall, Esq.

or to such other address which any party entitled to receive notice hereunder may hereafter designate to the other party in writing.

10. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Georgia.

11. 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed under seal as of the date first above written.

"HARTWELL"

HARTWELL RAILWAY COMPANY

By: *[Signature]*

Title: *President*

Attest: *Henry Heathcote*

Title: *Treasurer*

[CORPORATE SEAL]

"WALTON"

THE GREAT WALTON RAILROAD
COMPANY

By: *R.P. Anderson*

Title: *President*

Attest: _____

Title: _____

[CORPORATE SEAL]

H:\WPDOCS\SPW\BOD\GREATWAL.TRA

EXHIBIT A

The Railroad Line

All of Hartwell's right-of-way and associated property between Bowersville and Hartwell, Georgia, including, without limitation, any and all tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, signals, crossing protection devices, communication lines and poles that are affixed on the date of this Agreement to the land between the above-described points.

EXHIBIT B

The Equipment

All of Hartwell's railroad equipment and other personalty, including, without limitation:

- (i) diesel locomotive number 2 (a forty-four (44) ton locomotive);
- (ii) diesel locomotive number 5 (a forty-four (44) ton locomotive);
- (iii) diesel locomotive number 7 a (fifty (50) ton locomotive);
- (iv) one flat car;
- (v) one tie remover/insertter;
- (vi) one spray car; and
- (vii) all parts, inventory, equipment and tools regarding the maintenance and operation of the Line and the foregoing equipment.

C
EXHIBIT "A"

Business Agreements

1. Lease dated December 29, 1989 between Seller as Lessor and All Aboard Travel as Lessee;
2. Lease dated December 29, 1989 between Seller as Lessor and the Whistle Stop Tavern as Lessee.
3. Rail Transportation Contract between Viscosity Oil, Seller, Missouri Pacific Railroad Company, Southern Railway Co. and Consolidated Subsidiaries.
4. Transportation Contract between Unimin Corporation, Seller, CSX Transportation, Inc., Southern Railway Company and Consolidated Subsidiaries.
5. Marks Agreement with Southeastern Industrial Enterprises, Inc., dated December 4, 1989.
6. Lease Agreement: Hartwell Food and Elevator.
7. The following Oral Agreement: Charles Verdell is a tenant of a dwelling house located on the real property at Airline and is entitled to remain there rent free for up to eight months after the closing of the contemplated sale of assets.
8. Agreement for track usage fees in lieu of storage fees with Real Enterprises, Inc.

TROUTMAN, SANDERS, LOCKERMAN & ASHMORE
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW
CANDLER BUILDING, SUITE 1400
127 PEACHTREE STREET, N.E.
ATLANTA, GEORGIA 30303-1810
404/658-8000
CABLE: MARLIN
TELECOMER: 404-221-0469

JOHN R. MOLM

WRITER'S DIRECT DIAL NUMBER
404-258-8107

March 14, 1990

Ms. Norata R. McGee
Secretary
Interstate Commerce Commission
ATTN: Mail Room (Room #1324)
12th Street & Constitution Avenue, N. W.
Washington, D. C. 20423

Re: Notice of Exemption

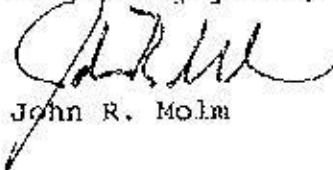
Dear Ms. McGee:

This letter is to supplement the Notice of Exemption filed on this day. With respect to the proposed acquisition by Great Walton Railroad Company d/b/a Hartwell Railroad Company of the assets of the Hartwell Railway Company, this is to certify that this transaction involves the acquisition of the assets of a nonconnecting carrier where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a Class I carrier.

Please also note that on page three (3) of the Notice of Exemption, third line, "Hartwell Railway" should read "Hartwell Railroad."

Thank you for your attention to these matters. A hard copy of this letter will be delivered tomorrow.

Very truly yours,



John R. Molm

JRM:jm

cc: Beryl Gordon

TROUTMAN, SANDERS, LOCKERMAN & ASKHOFF

ATTORNEYS AT LAW

12th Street, N. W., Washington, D. C.

Atlanta, Georgia 30303

March 16, 1990

March 16, 1990



Mr. RONALD W. EDECO
Secretary
Interstate Commerce Commission
ATTN: Mail Room (Room 81374)
12th Street, N. W., Washington, D. C. 20423

RE: Motion for Exemption - Finance Exempt No. 31576

Dear Mr. Edeco:

This letter is an supplement Notice of Exemption filed on March 14, 1990. Insofar as it is known, the mile-points for the Hartwell Railway Company commence at mile-post 0 at Hartsville, Georgia and terminate at mile-post 10.5 at Hartwell, Georgia.

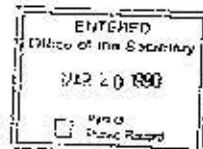
Thank you for your attention to this matter. A hard copy of this letter will be delivered on Monday.

Very truly yours,

[Signature]
JOHN R. HALE

JRH:je

cc: Marion Guyton



Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: April 2, 1990.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-7936 Filed 4-5-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31626]

Great Walton Railroad Co., d/b/a Hartwell Railroad Co.—Trackage Rights Exemption—Hartwell Railway Co.; Exemption

Hartwell Railway Company has agreed to grant local trackage rights to Great Walton Railroad Company, doing business as Hartwell Railroad Company, between milepost 0.0, at Bowersville, GA, and milepost 10.5, at Hartwell, GA. The trackage rights were to become effective on March 21, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John R. Mohr, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, GA 30303-1810.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978)*, as modified in *Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980)*.

Dated: April 2, 1990.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-7937 Filed 4-5-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31615]

Tradewater Railway Co.—Trackage Rights Exemption—CSX Transportation, Inc.; Exemption

Decided: April 2, 1990.

CSX Transportation, Inc. (CSXT), has agreed to grant local and overhead trackage rights to Tradewater Railway Company (TWRV) between milepost 290.78, at Providence, KY, and milepost 294, at Diamond Junction, KY, a distance of 3.22 miles. The trackage rights were to become effective on the effective date of this notice or on the effective date of the

trackage rights agreement between TWRV and CSXT, whichever is later.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Frank J. Pergolizzi, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978)*, as modified in *Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980)*.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-8025 Filed 4-5-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31620]

Carolina Rail Services Co.—Acquisition and Operation Exemption—Carolina Rail Services, Inc.; Exemption

Carolina Rail Services Company (CRSC) has filed a notice of exemption to acquire the terminal switching operations formerly conducted by Carolina Rail Services, Inc. (CRS), at Morehead City, NC, and certain incidental trackage rights, over a line of the North Carolina Ports Railway Commission, an agency of the State of North Carolina.¹ The line extends between the former Atlantic & East Carolina Railway milepost 94.1 (Western boundary) and milepost 94.5 (Eastern boundary), a distance of approximately one mile.

Any comments must be filed with the Commission and served on Michael A. Nemeroff, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

This notice is filed under 49 CFR 1180.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 2, 1990.

¹ CRSC is a partnership consisting of CRS (which no longer operates as it ceases as a result of the transaction here) and Casual Wood Corporation, a noncarrier.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-8105 Filed 4-5-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Meetings and Agenda

The regular Spring meetings of the Board and Committees of the Business Research Advisory Council will be held on April 25 and 26, 1990. All of the meetings will be held in the General Accounting Office Building, 441 C Street NW., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, April 25, 1990

10 a.m.—Committee on Compensation and Working Conditions (formerly Wages and Industrial Relations) Room 2736

1. Federal White Collar Pay Reform: proposed legislation and impact on White Collar Pay and Benefits Survey
2. Development of Employee Cost Levels by employment size class
3. Other business

10 a.m.—Committee on Price Indexes Room 2734

To be announced.

1:30 p.m.—Committee on Productivity/ Foreign Labor Room 2736

1. The Bureau's East European Program
2. Recent International Comparisons Work
3. New developments in the Multifactor Productivity Measurement Program
4. Impact of R&D on productivity growth: direct and indirect effects

Thursday, April 26, 1990

9:30 a.m.—Committee on Employment and Unemployment Room 2734

1. Reflections on the Polish Labor Market Information System.
2. Reports
 - a. Dual Jobholding Study
 - b. Occupational Employment Statistics (OES) Wage Survey
3. Focus Group—Job Vacancy Survey

AB 1242

GWRC EXHIBIT 17

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

HARTWELL FIRST UNITED	:	Case No. 3:16-CV-169 (CUL)
METHODIST CHURCH, INC.	:	
PLAINTIFF	:	
	:	February 9, 2017
	:	
HARTWELL RAILROAD COMPANY,	:	Athens, Georgia
INC., GREAT WALTON RAILROAD	:	
COMPANY & HARTWELL RAILROAD	:	
COMPANY, INC.	:	
DEFENDANTS	:	

TRANSCRIPT OF EXCERPT TESTIMONY
OF JONATHAN TALBOT CORNHOWER

BEFORE THE HONORABLE CLAY D. LAND,
UNITED STATES DISTRICT JUDGE PRESIDING

APPEARANCES:

FOR THE PLAINTIFFS: WALTER JAMES GORDON, SR.
P.O. BOX 370
HARTWELL, GA 30642
776-376-5418

FOR THE DEFENDANTS: MATTHEW D. WILLIAMS
2215 PILGRIM MILL CIRCLE
CUMMING, GA 30041
770-815-9331

LAMMY W. DIRCCCO, USCR
P.O. BOX 539
MACON, GA 31202-0539
(478-752-3497)

1 THE COURT: Raise your right hand and take the oath.

2 COURTROOM DEPUTY: Do you solemnly swear that your
3 testimony in this case shall be the truth, the whole truth, and
4 nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE COURT: Sir, if you would just be seated in that
7 chair. State your name for the record and spell it for the
8 court reporter.

9 THE WITNESS: My name is Jonathan Talbot Colehower.
10 J-O-N-A-T-H-A-N, Talbot T-A-L-B-O-T, Colehower,
11 C-O-L-E-H-O-W-E-R (Spelling).

12 THE COURT: Mr. Williams?

13 JONATHAN TALBOT COLEHOWER

14 Witness having been duly sworn, testifies on

15 DIRECT EXAMINATION

16 BY MR. WILLIAMS:

17 Q Mr. Colehower, thank you for coming today. Sorry you
18 had to wait so long, we appreciate it. What do you do for a
19 living?

20 A So, I am the President and CEO at Quality Holdings.

21 Q And what is your basic education and business
22 background, very quickly?

23 A So, I graduated from business school at Vanderbilt
24 and I spent the next eight years or so in management consulting
25 at Accenture, I was then in the software business. Always

1 around supply chain and manufacturing at Oracle for five years,
2 and then I was the CEO of a software company up in Boston for a
3 few years, and then I was with a management consulting firm,
4 McKenzie and Company, for several years and then just recently
5 I was the chief marketing officer for Manhattan Associates
6 which is a software company based in Atlanta, Georgia.

7 Q So, tell us about Quality Holdings, please.

8 A Yep. Quality Holdings is a business that has been
9 active for probably 20 years. It is based in Hartwell,
10 Georgia. It was recently sold by the owner, his name was Tom
11 Habel. Tom Habel sold the business to a private equity firm
12 named Jordan-Blanchard Capital out of Columbus, Georgia, and
13 they were looking for somebody to run the business is how I met
14 up with Jordan-Blanchard in March of 2016 and became the CEO in
15 May of 2016.

16 Q And what kind of products do y'all make?

17 A Yep. Our business, we have several different types
18 of business, but the primary business is in rotational molding,
19 so, it's essentially the plastics business. And we are a
20 contract manufacturer for companies that manufacture
21 rotationally molded products. So, if you think about an empty
22 tank on the back of a John Deere tractor, a plastic tank on the
23 back of a John Deere tractor, that's something that would be
24 rotationally molded. The requirements are typically it needs
25 to be light weight, it needs to be very durable, it needs to be

1 waterproof. So those are some of the things that kind of make
2 it distinctive as a rotationally molded product.

3 Q And what kind of raw materials do you use?

4 A So, 80 percent of our raw material is from what they
5 call LLDPE, which is a polyethylene substance that are those
6 pellets. This is what we receive in the rail cars that arrive
7 at our facility. So it's these pellets that are then
8 pulverized into a powder that looks -- well it is -- this is an
9 example of the powder that we pulverize, and then that powder
10 is then essentially colored and then we put it into a cast
11 aluminum mold and that cast aluminum mold is then --
12 essentially it rotates in a large oven. And when it rotates
13 the polyethylene melts, covers the inside of the mold, for say
14 15 minutes we will cook it, and then you pull it out, cool it
15 down and then you remove the part from the mold. That
16 represents about 80 percent of what we do.

17 Q You brought a sample of a finished product?

18 A I did.

19 Q If you would just, please, show the Judge?

20 A Okay. This was the smallest example that I could
21 find. We typically make fairly large products. This is called
22 a rocking horse feeder. So most people that own horses will
23 tell you that horses should eat from the ground, not up high.
24 So this is called a rocking horse feeder. It sits on the
25 ground, it doesn't tip over and it serves that purpose.

1 The reason I brought this one is because a lot of our
2 customers are entrepreneurs. They have an idea, they want to
3 bring it to market, and that's an example of a woman who is an
4 entrepreneur out of Florida, had the idea and we've been
5 manufacturing those for her for five years.

6 Q How many people do you employ at the plant?

7 A So, we fluctuate because our business is somewhat
8 seasonal. The peak for 2016 was a hundred -- right around
9 hundred employees.

10 Q And how has your business grown since you have taken
11 over?

12 A So, in 2016 the top line revenue was up by 20 percent
13 and the EBITA, the earnings before taxes and interest, was up
14 40 percent. So we're a 10 million dollar business in 2016,
15 and my forecast for 2017 is that we'll be somewhere around
16 12 million.

17 Q And how is that going to affect your need for rail
18 service?

19 A Well, it will increase for sure. That's the largest
20 input to our process.

21 Q So, you get your raw material by rail?

22 A Correct.

23 Q And how much product or how much material is in a
24 single rail car?

25 A Two-hundred thousand pounds.

1 Q And how would changing to truck affect your business?

2 A So, one of the nice things about the product that we
3 buy is this polyethylene, these pellets, are a commodity. So
4 anybody can look out on the web and find out what the price is
5 on any given day. So, right now we pay 72 cents per pound. If
6 I were to do that by truck that would be 80 cents a pound. So
7 it's about a 10 percent cost reduction -- cost advantage that
8 we have by being on the rail spur.

9 Q And how many cars did you get in 2016?

10 A Twenty-one in the year.

11 Q And what is your forecast for 2017?

12 A I'm expecting we'll have 25.

13 Q And are there other opportunities that you're
14 exploring because you are rail served?

15 A Yes. We have -- I'm looking at two opportunities
16 right now. We've got one rotational molding company, which is
17 located in Toccoa, Georgia, they've asked if we would
18 pulverize, essentially turn this into this (demonstrating) for
19 them because they don't have the capacity to do it. They've
20 asked if we would do a million pounds. So, last year we did
21 four million pounds and that would be an additional million on
22 top of that.

23 Q And what role -- what was the significance of rail
24 service for your parent company when they stopped this
25 particular property?

1 A Well, I think it was huge. I mean, having the rail
2 spur gives you a cost advantage in the market. I'd love to say
3 that our customers come to us because of our product quality or
4 our service, but there is no doubt that price is a huge factor
5 and having that price advantage gives us an advantage in the
6 market.

7 Q And how would your business be impacted without rail
8 service?

9 A A couple of ways. One, would be that we would have a
10 price increase for sure. Ten percent, at lease, price
11 increase, and that doesn't include all of the extra material
12 handling from what we do today. So that would be an immediate
13 impact. I would then have to figure out either how we're going
14 to make up that difference or how I can approach my customers
15 and ask them or basically tell them that we're going to have a
16 10 percent price increase.

17 The second would just be from an overall logistics
18 standpoint. Bringing a rail car in for us is fairly
19 straightforward. The rail car comes in, we connect a tube
20 underneath it, that tube automatically gets pulled in through a
21 vacuum into the pulverizer to produce this. If we have to
22 start buying in a bulk truck, now I have to unload it, move the
23 material over to the pulverizer and then somehow get it up into
24 a gravity feed or some sort of a way to get it into the top of
25 the pulverizer. So there are business process changes as well

1 as the economics.

2 Q You're aware of the dispute that's going on between
3 the railroad and the Methodist Church. How far is your plant
4 from the church?

5 A A mile. I don't know for sure. I don't want to say
6 exactly. I would say a mile, but I don't know exactly.

7 Q Are you in favor of the railroad being able to
8 improve its service to you?

9 MR. GORDON: Your Honor, I object to the question.

10 MR. WILLIAMS: I'll withdraw it.

11 THE COURT: All right. I think he has covered the
12 essential information that I need to know.

13 MR. WILLIAMS: I don't have anything further. Thank
14 you very much.

15 THE COURT: Cross examination.

16 CROSS EXAMINATION

17 BY MR. GORDON:

18 Q Mr. Colehower, just a very few questions. You've
19 been able to handle your business and the dramatic increase
20 that you've had with your current rail service; is that
21 correct?

22 A Yes, sir.

23 Q And I believe that you testified that what you
24 anticipate doing was adding four cars in 2017?

25 A That's my current forecast, yes.

1 Q That would be to go from 21 cars to 25 cars?

2 A Correct.

3 Q And your current service is satisfactory; is that
4 right?

5 A Correct.

6 Q And all of the concerns that you have about moving
7 to track that presumed that there was no rail service, correct?

8 A Correct.

9 Q So if you continue to have rail service, from your
10 perspective, you're fine, right?

11 A Right.

12 Q Thank you.

13 MR. GORDON: That's all I have.

14 THE COURT: Any redirect?

15 MR. WILLIAMS: No redirect. Thank you.

16 THE COURT: All right, sir. Thank you for coming.
17 You're excused.

18 We're going to take a lunch break. As I told you
19 before I had this other hearing scheduled at 2:00 which is
20 obviously going to get bumped back. I really think,
21 realistically, we're not going to get back to this until 3:00.
22 I hate to do that, but we need to take at least an hour for
23 lunch and then I think I can move that other hearing along
24 pretty quickly to get it done in 30 minutes.

25 How much more of these other witnesses; are they

1 going to be cumulative or is it going to be new stuff?

2 MR. WILLIAMS: I expect both of them to be new stuff.

3 THE COURT: And how many witnesses do you have?

4 MR. GORDON: Judge, we have one and I anticipate 20
5 minutes.

6 THE COURT: We are going to stay until as long as it
7 takes to finish today.

8 MR. WILLIAMS: Well, I'm hopeful that the other
9 witnesses will be quicker than the ones this morning.

10 THE COURT: I don't think you'll need to be back --
11 you can come back whenever you want -- but I don't think we're
12 going to get back to you until 3:00. So, you'll just have to
13 take a long hour and a half lunch break. The rest of us will
14 be in recess until 2:30.

15 (RECESS)

16
17
18 (Proceedings recessed at 1:30 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Tammy W. DiRocco, Federal Official Court Reporter,
on and for the United States District Court for the Middle
District of Georgia, do hereby certify that pursuant to Section
753, Title 28, United States Code, that the foregoing is a true
and correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the regulations
of the Judicial Conference of the United States.

Dated this 15th day of February, 2017

Tammy W. DiRocco

Tammy W. DiRocco CCR
Federal Official Court Reporter

AB 1242

GWRC EXHIBIT 18

Quality Holdings: A best kept secret in Hartwell

By Melba Morgan
Staff writer

Quality Holdings just might be one of the county's best kept secrets. Situated quietly back on Fisher Drive, the company is a shining example of innovation, creativity and commitment to staff and employee base.

The company produces large and small plastic bins that are used in commercial, retail and consumer products. They are produced "in-house" as the training for the large bins you might see on the shelves at a grocery store. For small, portable plastic bins, for example, for beer cans and portable toilets.

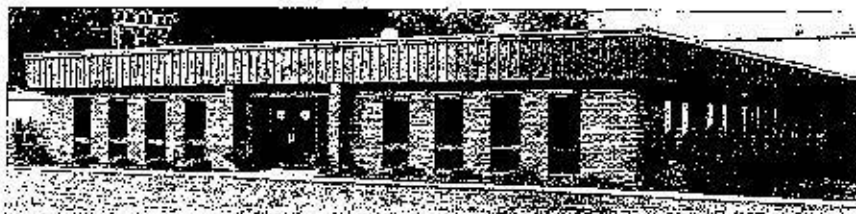
The company, which was purchased from Tom Hulse last July, was founded in the 1960s as the first of its kind in the area.

President and CEO Coleman Colepower said that in the company's recent structural growth, it has seen growth.

"When we made the transition, there was a company in Atlanta that we purchased into our company. This was structural growth," Colepower said. "When we made the acquisition, we had a big part of our business in Georgia. The company growth is broad-based and we are growing significantly. And the real reason about the organic growth."

According to Colepower, there are quite a few of these customers that are local and that make for some very busy days in the plant during the summer months.

"When it gets the hottest, it is the busiest time here," he said.



Quality Holdings is located on Fisher Drive. The company produces large and small plastic bins that are used in commercial, retail and consumer products. They even produce items such as the training for the large bins you might see on the shelves at a professional football game, the plastic bins for coal stoves and portable toilets.

"We've had to staff up three shifts six days a week and sometimes seven days a week just to keep up with the demand for products."

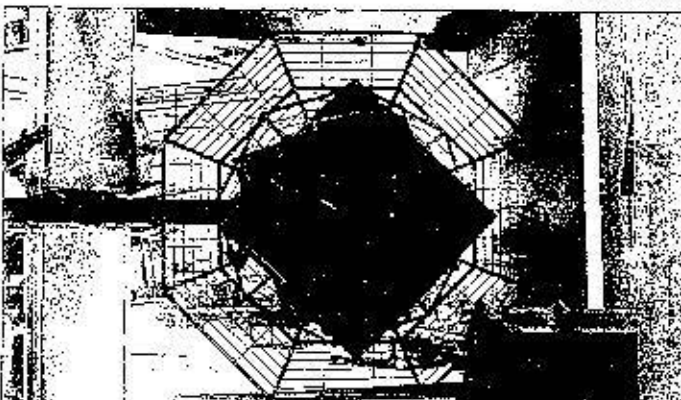
In producing products, the company uses two main types of bins. They are rotational molding and injection molding.

All of the raw materials, injection molding, come from the plant by rail. These materials are then ground into powder. For some bins it takes as much as 500 pounds of powder to make one product.

In the rotational molding, that is applied to the resin, rotational molding, the plastic powder is put into molds inside of machines known as jerrys that are usually large ovens. These ovens are 300 degrees. While the product is rotated in the oven for only 15 minutes, it is followed by a cooling process and the entire procedure takes about an hour.

"It is like baking a cake," said Coleman Colepower, manager. "Everything has to be just right."

According to Coleman Colepower, rotational molding is a lot of fun. "It's a lot of fun," he said.



A Jerry, a rotating wheel is essential to Jerry Ovens, operates at 300 degrees and is used in the rotational molding process.

customers.

"Our customers are how we make our raw materials," he said. "We have the ability to do things nobody else in the business is able to do. There is no question that the rail system gives us such an advantage. Shipping a big bulky part is expensive. You want to have the ability to produce the product as close to you as you can to keep the expenses down. It reduces the cost for the customer."

It is the commitment to quality that also sets Quality Holdings apart from other companies.

Some of the customers are the hardware stores. Some of the customers are the hardware stores. Some of the customers are the hardware stores. Some of the customers are the hardware stores.

Without a solid employee base none of this would be possible.

"This is hard work and there are big industrial ovens," Colepower said. "These guys do great work and I'm very proud of the work they do. A lot of chemistry and we're also good at what we do."

At Quality Holdings, quality is not just a slogan - it's the way of life.

At Quality Holdings, quality is not just a slogan - it's the way of life. At Quality Holdings, quality is not just a slogan - it's the way of life. At Quality Holdings, quality is not just a slogan - it's the way of life.



Above: Wade Givens works on the compression molding process.

Photo by Melba Morgan

Our Great Employees Are The Source Behind Our Success. Thanks For All The Energetic Work You Do.



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GWRC EXHIBIT 19

HISTORIC RESOURCES OF HARTWELL, HART COUNTY, GEORGIA

INDIVIDUAL PROPERTY #4

I. IDENTIFICATION

HISTORIC NAME: Charles I. Kidd House
 CURRENT NAME: Bailey Residence
 STREET ADDRESS: 304 West Howell Street
 CITY: Hartwell
 PRESENT OWNER: Jeb & Mary Bailey
 MAILING ADDRESS: 304 West Howell Street
 CITY: Hartwell
 STATE: Georgia
 ZIP CODE: 30643
 CURRENT USE: residence
 ACREAGE: city lot (approximately 1 acre)
 U.S.G.S. QUADRANGLE: Hartwell, Georgia
 U.T.M. REFERENCE: Z17 E321910 N 3802850
 V.B.D. OR TAX MAP NUMBER: H-10-8-2

II. DESCRIPTION

ARCHITECTURAL DESCRIPTION AND PRESENT CONDITION:

This two-story, frame, Victorian-eclectic residence contains Queen Anne-style influences. A prominent two-story gable-roofed bay extends on the principal facade. The bay contains paired 2/2 windows on the first floor, a single 2/2 window on the second floor, and a small pair of attic windows located in the richly decorated gable. A frieze of panels defines the gable which is sheathed in fish-scale shingles and is capped with an open work bargeboard. A second-story porch extends from this bay, across the facade, and terminates in a semicircular conical-rooted turret. The first-story porch extends beyond the house proper one bay at each end. This porch is supported on turned posts with turned balusters beneath the rail. Shallow arches are formed by the turned brackets. The second-story porch contains smaller, yet elaborate, cut work brackets. The entrance is defined by a pediment projecting from the porch; an open-work frieze includes a masonic emblem cut with a jigsaw. An arched doorway leads into the central stair hall. A transomed door opens onto the second story porch.

The interior plan is asymmetrical around the central hall. Projecting bays are located on the east and west elevations. Two internal chimneys are also asymetrically positioned. The millwork of the interior includes tongue-and-groove wall and ceiling surfaces, glazed transoms above the doorways, period mantels, and a variety of turned millwork embellishments. Interior alterations include the creation of a bathroom from the rear porch in the 1930s. Two rooms were created at this time by enclosing the rear porch. In 1972, one of these rooms was altered again to update the bathroom fixtures.

The Kidd House is situated on one half of a city block and fronts toward Howell Street. Historic outbuildings include a brick greenhouse, a frame garage, and a frame chicken house. A small rental apartment sheathed in aluminum siding is located rear of the house and is contemporary. The property contains the site of a former frame school structure. The property boundary on Howell is defined by a contemporary brick and wrought-iron fence. Several large pecan trees dominate the landscape features.

The property is in good condition.

PHOTOGRAPH NUMBER: 65

III. HISTORY

ORIGINAL OWNER: Charles I. Kidd
 ORIGINAL USE: residence
 ARCHITECT/BUILDER: unknown
 HISTORIC ACREAGE: same as present
 DATE OF CONSTRUCTION: 1896-1897
 DATE(S) OF ALTERATIONS: 1930s, 1972

HISTORICAL NARRATIVE (FROM ORIGINS TO PRESENT):

The Charles I. Kidd House was built in 1896 on Lot 113 and a portion of Lot 114 of the original city plan. A frame school house originally stood on the site and was used by the early Methodists as a meeting place prior to the construction of the First Methodist Church in 1859. When the Kidd House was constructed, the building was moved to the rear of the property where it remained until 1956 when it was demolished.

Charles I. Kidd was the owner and manager of a livery business in downtown Hartwell. According to The Hartwell Sun, "Kidd was born and reared in Maryville, Tennessee. He came to Hartwell in 1881 and went into the livery business with his brother, Captain J. M. Kidd [who resided in Danielsville, Georgia.] C. I. Kidd worked with his brother for two years before opening a livery and sale stable of his own." In 1897, Kidd's frame livery stable burned and he constructed a brick building on the same site. This structure remains on the northeastern corner of the square. Other businesses were ventured by the Kidd family. Kidd owned a grocery store in Hartwell; according to a newspaper account of 1897, the grocery business was operated by Gene Matheson and included a full line of staple groceries and hardware. Kidd's son, C. A. Kidd, opened a livery stable in nearby Lavonia in 1915. C. I. Kidd prospered from his business ventures. He was termed "phenominally successful" and his worth was estimated between \$25,000 and \$40,000 according to an 1897 account. This success apparently provided the resources to construct his home, one of the finest of its time in Hartwell. An article in The Hartwell Sun of April 14, 1897, states that Kidd had just completed one of the handsomest and most convenient mansions in

Hartwell. The inside finish was said to be the finest in this section of the state.

Kidd lived in this structure until his death in 1929. His widow continued to live here until her death in 1938. An unmarried daughter then resided here until her death in 1968. A grand daughter, Mrs. Mary Hailey Bailey, and her husband Jep Bailey own and occupy the structure today.

IV. SIGNIFICANCE

NATIONAL REGISTER CRITERIA: B, C

AREA(S) OF SIGNIFICANCE: Architecture, Commerce/Transportation

LEVEL OF SIGNIFICANCE: Local

STATEMENT OF SIGNIFICANCE (ARCHITECTURAL AND HISTORICAL):

The Kidd House is an architecturally significant example of the Queen Anne style. It is one of the finest examples of this style in the multiple resource area; interior plan and detailing reflect vernacular details of design and craftsmanship. The property also gains significance from the surviving group of historic outbuildings; such outbuildings were once common but are now relatively rare.

The Kidd House is historically important for its associations with C. L. Kidd. Kidd was a prominent Hartwell citizen and a leading businessman whose financial success contributed to the economic growth of downtown Hartwell. He played an instrumental role in the development of a major local livery business which served an important function in the day-to-day transportation of Hartwell's citizens. His influence in supporting transportation extended beyond Hartwell to the nearby community of Lavonia where his son, C. A. Kidd, operated a local livery business.

CONTRIBUTING/NON-CONTRIBUTING RESOURCES:

Contributing building(s): 1

Contributing structure(s): 3

Non-contributing building(s): 1

V. SOURCES

REPRESENTATION IN EXISTING SURVEYS: Historic Structures Field Survey: Hart County, Georgia

SOURCES OF INFORMATION: Interview with Mr. & Mrs. Jep Bailey; the The Hartwell Sun, "Trade and Illustrated edition;" Baker, John William, The History of Hart County.

FORM PREPARED BY:

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Atlanta, Georgia

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Historic Preservation Section, Department of Natural Resources
Atlanta, Georgia

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GWRC EXHIBIT 20

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LEASE AGREEMENT WITH OPTION

between

Hartwell Railroad Company
and
The Great Walton Railroad Company

as Lessor

and

TORCH of Hartwell, Inc.
as Lessee

May __, 2015

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Exhibit A	-	Legal Description of Leased Premises
Exhibit A-1	-	Drawing of Leased Premises
Exhibit B	-	Legal Description of Best Powder Premises

LEASE AGREEMENT WITH OPTION

THIS LEASE AGREEMENT WITH OPTION ("Lease" or "Agreement"), is made and entered into this ____ day of May, 2015, between **HARTWELL RAILROAD COMPANY**, a Georgia business corporation with principal office in Walton County, Georgia, and a mailing address of 1096 North Cherokee Road, Social Circle, Georgia 30025 ("HRR"), and **THE GREAT WALTON RAILROAD COMPANY**, a Georgia business corporation with principal office in Morgan County, Georgia ("TGWRC") (HRR and TGWRC are hereinafter sometimes collectively referred to as the "Lessor"); and **TORCH OF HARTWELL, INC.**, a Georgia nonprofit corporation with principal office in Hart County, Georgia, and a mailing address of P.O. Box 971, Hartwell, Georgia 30643 (the "Lessee").

RECITALS:

A. TGWRC owns a tract or parcel of land in the 1112th G.M. District of Hart County, Georgia, in the corporate limits of the City of Hartwell, including a tract of land located on Railroad Street, between South Forest Avenue and South Webb Street, and Seller's railroad right-of-way and turntable extending from South Webb Street to Athens Street, more particularly described on Exhibit A, attached to and made a part of this Agreement (this tract or parcel of land is referred to as the "Railroad Street Park Project Area"). Although the Hartwell Railroad is not currently in active operation on the Railroad Street Park Project Area, HRR has historically used the Railroad Street Park Project Area in connection with the operation of the Hartwell Railroad. TGWRC and HRR own certain furniture, fixtures, machinery and equipment (collectively referred to as the "Personal Property," and more particularly described in **Section 1.1** of this Lease) are located in the Railroad Street Park Project Area.

B. Lessee is a non-profit corporation, and has qualified as a tax-exempt organization under Section 501(c)(3) of the United States Internal Revenue Code. Lessee was formed primarily for the purpose of acquiring the Railroad Street Park Project Area and Personal Property, developing the Railroad Street Park Project Area as a public park, and using the Personal Property in connection with the development and operation of the park.

C. At Lessee's request, the City Council of the City of Hartwell, Georgia, has declared that the Railroad Street Park Project Area is a "slum area," as that term is defined in the Georgia Urban Redevelopment Law, has designated the Railroad Street Park Project Area as appropriate for an urban redevelopment project under the Georgia Urban Redevelopment Law, and has encouraged Lessee and any other interested parties to submit to the City an urban redevelopment plan that provides for the implementation of an urban redevelopment project regarding the Railroad Street Park Project Area.

D. Lessor is willing to lease the Railroad Street Park Project Area (the "Leased Premises") and certain personal property (the "Personal Property") to Lessee on a long-term basis.

E. Accordingly, the parties desire to execute this Lease to confirm the terms and conditions of their promises, agreements, covenants and understandings, and to be legally bound by such promises, agreements, covenants and understandings.

NOW, THEREFORE, for and in consideration of TEN DOLLARS (\$10.00) in hand paid, the mutual covenants, promises and undertakings outlined in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both of the parties, Lessor and Lessee hereby covenant and agree as follows:

ARTICLE I: DEMISED PREMISES

1.1 **Premises.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, for the term hereinafter set forth, and upon and subject to the terms and conditions of this Lease, that certain tract or parcel of land, with improvements thereon, more particularly described on Exhibit A to this Lease, together with all rights, ways, easements, improvements, fixtures, electrical, plumbing, heating and air conditioning systems, fences, mineral rights, riparian rights, permits and any and all appurtenances (collectively referred to as the "Premises" or "Leased Premises") and one railcar currently located on the Leased Premises on the Commencement Date (but specifically excluding the caboose) and the safe, restaurant equipment, and all other contents of all buildings and structures on the Leased Premises on the Commencement Date (such railcar, safe, restaurant equipment, and all other contents are collectively referred to in this Lease as the "Personal Property"). The parties acknowledge that the Premises include all other structures and improvements located on the tract of land described on Exhibit A to this Lease. Accordingly, all references in this Lease to the "Premises" or "Leased Premises" shall include and also refer to all improvements and appurtenances to the tracts of land described on Exhibit A to this Lease, as well as the tract of land described on Exhibit A to this Lease. The tract of land described on Exhibit A is sometimes referred to in this Lease as the "Land" or the "Lot". Each building or structure located on a tract of land is sometimes referred to as a "Building" and are sometimes collectively referred to as the "Buildings".

1.2 **Acceptance of Premises.** Lessee has examined and hereby accepts the Leased Premises and Personal Property in their present "as is" condition. At the termination of this Lease, Lessee shall deliver the Premises and Personal Property in good order and condition, normal wear and tear only excepted, subject to any alterations, additions or improvements made by Lessee, as permitted in this Lease.

ARTICLE II: TERM

2.1 **Term.** The Premises and Personal Property are leased for a term of ninety-nine (99) years (the "Term") beginning on the ____ day of May, 2015 (the "Commencement Date") and ending on the 31st day of May, 2114 (the "Conclusion Date"), at which time this Lease shall terminate absolutely and without further obligation on the part of either party, unless otherwise provided herein, or unless sooner terminated as hereinafter provided.

ARTICLE III: RENT; UTILITIES AND TAXES

3.1 **Rent.** In consideration of and for Lessee's right to use and occupy the Premises and Personal Property during the Term, Lessee shall pay rent to Lessor in accordance with the following schedule:

(a) **Rent-Free Period.** During the first nine months of this term of this Lease, Lessee shall not be obligated to make to Lessor any monthly payment as rent.

(b) **Two-Year Initial Rate.** After the nine-month period, beginning on March 1, 2016, and continuing on the first of each month thereafter until February 1, 2018, Lessee shall pay to Lessor as rent for the term of this Lease Agreement the sum of FIVE HUNDRED and NO/100's DOLLARS (\$500.00) per month in advance (the "Initial Rent").

(c) **Regular Rate.** Beginning on March 1, 2018 (the same day upon which the Lump Sum Rental Payment [hereinafter defined] is due), and continuing on the first of each month thereafter until July 1, 2052, Lessee shall pay to Lessor as rent the sum of SEVEN HUNDRED and NO/100's DOLLARS (\$700.00) per month in advance (the "Regular Rent").

(d) **Lump Sum Payment.** Additionally, no later than March 1, 2018, Lessee shall pay to Lessor the additional sum of FOUR THOUSAND EIGHT HUNDRED and NO/100's DOLLARS (\$4,800.00) (the "Lump Sum Rental Payment"). Lessee shall be entitled to make a partial payment or multiple partial payments towards the Lump Sum Rental Payment in advance, from time to time, at such times and in such amounts as Lessee may desire, at its option. Any such payments shall be credited to the Lump Sum Rental Payment. Contemporaneously with any such advance payment, Lessee shall notify Lessor in writing that Lessee is making an advance payment to be applied to the Lump Sum Rental Payment.

(e) **Last Regular Payment.** On August 1, 2052 (one month after the last monthly payment of \$700.00 is due), Lessee shall pay to Lessor as rent the sum of ONE HUNDRED FIFTY and NO/100's DOLLARS (\$150.00) in advance (the "Last Regular Rent Payment").

(f) **Final Rent.** Beginning on September 1, 2052 (one month after the Last Regular Rent Payment is due), and continuing on September 1 of each year thereafter until the termination of this Lease, Lessee shall pay to Lessor as rent the sum of ONE and NO/100's DOLLAR (\$1.00) per year in advance (the "Final Rent").

(g) **Parties' Intention.** The parties acknowledge that they intend that Lessee shall pay to Lessor the total sum of THREE HUNDRED THIRTY-ONE THOUSAND TWO HUNDRED FIFTY and NO/100's DOLLARS (\$331,250.00) (the "Total Rent"), plus the nominal sum of ONE DOLLAR per year after as rent for the Term of this Lease.

(h) **General Provisions Concerning Payment of Rent.** Each rental payment is payable in advance without demand on the date such payment becomes due. Although each monthly rental payment shall be due on the first (1st) day of the month, such payment shall not

be deemed late, and shall not constitute a default under this Lease, until the tenth (10th) of the month, notwithstanding any other provision of this Lease. All rent payments shall be made by check payable to Lessor, and shall be delivered or mailed to Lessor at 1096 North Cherokee Road, Social Circle, Georgia 30025, or at such other address as may be designated from time to time by Lessor by delivering to Lessee a written notice of such address change.

3.2 **Utilities.** Lessee shall contract for in its own name and pay or cause to be paid, when due, any and all charges for water, electricity, gas, sewage, waste, trash and garbage disposal, television, telephone and other utility services furnished to the Premises. Under no circumstances shall Lessor be obligated to pay for any such utility services.

3.3 **Taxes.** Lessor shall pay to the appropriate taxing authority any taxes, general and special assessments and other public charges of every description, levied on or assessed against the Premises, on or before the day on which any such taxes are due, and Lessee shall reimburse Lessor for the prorata portion of Lessor's property taxes attributable to the Premises. No sooner than thirty (30) days before Lessor's taxes are due to the taxing authority, Lessor shall notify Lessee of the amount that Lessee shall owe to Lessor as reimbursement under this paragraph, and shall provide such documents and information as Lessee may reasonably request to support Lessor's calculation. Lessee shall pay such amount to Lessor no later than thirty (30) days after Lessee's receipt of Lessor's demand and supporting documents and information.

ARTICLE IV: USE OF PREMISES

4.1 **Permitted Uses.** Subject to the leases identified in Section 7.6 of this Lease, Lessee may use and occupy the Premises and Personal Property in any manner permitted by applicable law (collectively the "Permitted Use"), but shall not use or occupy the Premises for any illegal or improper purpose, or in a manner not permitted by applicable law, or in a manner that constitutes a nuisance. Lessor acknowledges that Lessee intends to develop the Leased Premises and Personal Property as a public park, and Lessor expressly approves such use.

ARTICLE V: ALTERATIONS AND ADDITIONS

5.1 **Lessee Work.** Lessor acknowledges that Lessee intends to develop the Leased Premises and Personal Property as a public park, and Lessor hereby authorizes Lessee to make any and all alterations, additions, modification and improvements to the Leased Premises and Personal Property as Lessee shall deem appropriate for Lessee's intended use; provided, however, that Lessee shall be permitted temporarily to remove any and all rails in the block between Forest Avenue and Webb Street, as long as Lessee re-installs all such rails at the conclusion of construction. Lessee shall not be obligated, however, to reinstall the rails in such a manner and to such specifications that the rails are able to support rail traffic. All alterations and additions shall become part of the Leased Premises or Personal Property, as the case may be, and shall not require any increase in Rent, and shall remain on the Leased Premises upon the termination of the Lease. Before Lessee commences any alteration or addition, it shall secure all licenses and permits required for the work, and if the alteration or addition to the Premises exceeds Fifty Thousand and 00/100 Dollars (\$50,000.00), Lessee shall notify Lessor of the anticipated work. Lessee shall fully indemnify Lessor for any cause of action, claim, loss, or

liability against Lessor and which results from any alteration or addition initiated by Lessee. Lessee shall pay promptly when due the entire cost of any such work done in respect of its alterations and additions, and promptly discharge or bond any liens for labor performed or materials furnished in connection therewith that may attach to the Premises.

ARTICLE VI: LESSEE'S PROPERTY

6.1 **Ownership.** All property of Lessee located on the Premises from time to time and not otherwise attached or affixed to the Land or to the interior or exterior of a Building ("Lessee's Property"), shall be and remain the property of Lessee. At any time during the Term, Lessee may remove any of Lessee's Property from the Premises, unless prohibited under the terms of other agreements between Lessee and Lessor.

6.2 **Removal of Lessee's Property upon Termination of Lease.** Upon termination of this Lease, Lessee shall remove all Lessee's Property from the Premises, except alterations and additions made by Lessee and/or any fixtures or equipment, the removal of which would damage a Building. Lessee shall have ten (10) days after the termination of this Lease to either (1) remove all of Lessee's Property or (2) pay a full month's rent thus allowing Lessee thirty (30) days after termination to remove all of Lessee's Property. If Lessee has not removed all Lessee's Property from the Premises within ten (10) days (or within thirty (30) days if extended as provided above), such remaining Lessee's Property shall be deemed abandoned by Lessee.

ARTICLE VII: LESSOR'S COVENANTS AND REPRESENTATIONS

7.1 **Authority.** Lessor represents and warrants that it is the owner of the Premises, and has all requisite corporate authority to enter into this Lease without the consent or approval of any other party.

7.2 **Non-Interference.** Lessor shall not unreasonably interfere with Lessee's use of the Premises in the exercise of Lessee's rights, or in the performing of Lessee's maintenance, repair, service, and other obligations under this Lease.

7.3 **Quiet Enjoyment.** Lessor covenants that upon paying the Rent and observing and keeping all covenants, agreements, and conditions applicable to Lessee under this Lease, Lessee shall peaceably and quietly have, hold and enjoy the Premises, without hindrance or molestation from Lessor or anyone claiming by, through or under Lessor, except for the Best Powder Lease (defined in Section 7.6 of this Lease).

7.4 **Sale to be Subject to Lease.** If Lessor contracts to sell, or enters into negotiations for the sale of, the Leased Premises during the term of this Lease, then Seller shall disclose this Lease to the prospective purchaser and shall require such purchaser to acquire the Leased Premises subject to this Lease, and to assume Lessor's duties and obligation under this Lease. Lessor agrees that it shall not sell the Personal Property during the term of this Lease.

7.5 **Replacement of Railroad Ties.** At Lessee's request, and for such reasonable fee or cost as Lessor may reasonably charge, Lessor shall assist Lessee with the replacement or

repair of any railroad ties on the rail line on the Leased Premises that are rotten or in a state of disrepair.

7.6 **Leases and Licenses in Favor of Other Parties.** Lessor represents and warrants that no part of the Premises is subject to a lease or other agreement in favor of any other party, or any other type of agreement allowing use or occupancy of any part of the Leased Premises by any other party, except for the following:

- (a) **Lease to Best Powder, L.L.C.** A portion of the Premises, more particularly described on **Exhibit B** to this Lease (hereinafter referred to as the "Best Powder Premises"), is leased to Best Powder, L.L.C., pursuant to that certain Lease between Hartwell Railway Company, as lessor, and Hartwell Feed and Elevator Company, as lessee, dated May 1, 1974, subsequently assigned by Hartwell Feed and Elevator Company to Hartwell Lumber Company, subsequently assigned by Hartwell Lumber Company to Best Powder, L.L.C., as evidenced by a Quitclaim Deed from Hartwell Lumber Company to Best Powder, L.L.C., dated August 13, 2009, recorded on August 13, 2009, in Deed Book 641, at Pages 348-350, in the Office of the Clerk of the Superior Court of Hart County, Georgia (the "Best Powder Lease"). Lessee acknowledges that, although the Best Powder Premises are included in the Leased Premises, and Lessor is also leasing the Best Powder Premises to Lessee under this Lease, (a) Best Powder, L.L.C. is entitled to use and occupy the Best Powder Premises, (b) Lessee's rights to use and occupancy of the Best Powder Premises are subordinate and subject to the right of Best Powder to use and occupy the Best Powder Premises, and (c) Lessee cannot use or occupy the Best Powder Premises without the permission of Best Powder, L.L.C.
- (b) **License Agreements with Hartwell First United Methodist Church.** Certain portions of the Premises, more particularly described in the following agreements, are subject to licenses in favor of Hartwell First United Methodist Church, pursuant to the following agreements (hereinafter referred to as the "Church Licenses"):
 - (1) Agreement between Hartwell Railroad Company and Hartwell First United Methodist Church, dated December 20, 2007, recorded on October 2, 2014, in Deed Book 760, at Pages 436-439, in the Office of the Clerk of the Superior Court of Hart County, Georgia;
 - (2) Agreement between Hartwell Railroad Company and Hartwell First United Methodist Church, dated July 31, 2008, recorded on October 2, 2014, in Deed Book 760, at Pages 440-443, in the Office of the Clerk of the Superior Court of Hart County, Georgia; and
 - (3) Agreement between Hartwell Railroad Company and Hartwell First United Methodist Church, dated August 1, 2008, recorded on October 2, 2014, in Deed Book 760, at Pages 444-453, in the Office of the Clerk of the Superior Court of Hart County, Georgia;

Lessee acknowledges that, although the areas subject to the Church Licenses (hereinafter referred to as the "Church License Areas") are included in the Leased Premises, and Lessor is also leasing the Church License Areas to Lessee under this Lease, (a) Hartwell First United Methodist Church is entitled to use and occupy the Church License Areas, (b) Lessee's rights to use and occupancy of the Church License Areas are subordinate and subject to the right of Hartwell First United Methodist Church to use and occupy the Church License Areas, and (c) Lessee cannot use or occupy the Church License Areas without the permission of Hartwell First United Methodist Church.

Lessor represents that no other portion of the Premises is subject to any other lease, license agreement, or similar agreement providing for any use or occupancy of the Premises or any portion of the Premises by Best Powder, L.L.C., Hartwell First United Methodist Church, or any other person or entity. Further, Lessor agrees that Lessee may terminate this Lease at any time without penalty if (i) Best Powder, L.L.C. uses or occupies the Best Powder Premises in a way that interferes with Lessee's intended use of any part of the Premises, or if Best Powder claims the right to use and occupy any other portion of the Leased Premises besides the Best Powder Premises; (ii) Hartwell First United Methodist Church uses or occupies the Church License Areas in a way that interferes with Lessee's intended use of any part of the Premises, or if Hartwell First United Methodist Church claims the right to use and occupy any other portion of the Leased Premises besides the Church License Areas; or (iii) any other party uses or occupies any portion of the Leased Premises in a way that interferes with Lessee's intended use of any part of the Premises, or if any other party claims the right to use and occupy any other portion of the Leased Premises.

ARTICLE VIII: LESSEE'S COVENANTS AND REPRESENTATIONS

8.1 Lessee's Duty to Maintain Premises. During the Term of this Lease, Lessee shall maintain the Premises in a good and safe condition, and shall promptly make any and all repairs and replacements required to maintain such condition. The parties acknowledge that the Premises have not been regularly maintained for several years and are in a state of disrepair. Accordingly, Lessee shall not be obligated to make any alternations or additions to the Leased Premises.

8.2 Lessor Relieved of Duty to Maintain. Lessee acknowledges that Lessor shall not be required to furnish any services or facilities, or to make any repairs or alterations, of any nature whatsoever with respect to the Premises. Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises.

8.3 Yield Up. Lessee covenants to yield up peacefully and surrender the Premises upon the termination of this Lease in as good a condition as upon commencement of this Lease, reasonable wear and tear, casualty and condemnation excepted, and to remove all Lessee's Property.

8.4 **Use.** Lessee covenants that during the Term it will not use the Premises for any use other than the Permitted Use, nor injure or deface the Premises, nor permit any nuisance, nor suffer to occur on the Premises any activity that is improper, offensive, contrary to law or which will increase the premiums of Lessor's insurance on the Building or the Premises, unless Lessee agrees to bear such increased cost and pays such additional cost to Lessor at the time Lessee takes such action or allows such activity.

8.5 **Risk of Loss to Lessee's Property.** Lessee's Property and all furnishings, fixtures, equipment, effects and property of those claiming by, through, or under Lessee, located in or on the Premises, shall be at the sole risk and hazard of Lessee, and if the whole or any part thereof shall be damaged or destroyed by fire, flood, the leakage or bursting of pipes, or by theft or by any other cause, no part of such damage shall be borne by Lessor.

8.6 **Lessor's Entry.** Lessee covenants to permit the Lessor or its agents to enter the Premises during reasonable, non-peak business hours upon twenty-four (24) hours advance notice, or at any time in the event of an emergency, for the purpose of inspections and exercising any rights in carrying out any obligations Lessor may have under this Lease.

8.7 **Taxes.** Lessee covenants to pay promptly when due all taxes, general and special assessments, and other public charges of every description, levied on, assessed against or imposed on Lessee's Property.

8.8 **Liens.** Lessor and Lessee covenant that neither party will create any lien or encumbrance on the Premises or cause any lien or encumbrance to attach to the Premises, and if either party does so create a lien or allow a lien to attach to the Premises, it shall promptly cause the same to be discharged or bonded.

ARTICLE IX: INSURANCE

9.1 **Building and Property Insurance.** The parties acknowledge that the improvements on the Leased Premises consist of railroad tracks (consisting of railroad rails and ties), the Hartwell Depot Building and platform, the Rio's Mexican Café/All Aboard Travel building, the railroad turntable, and other miscellaneous improvements, and that all such buildings and improvements are in a dilapidated state. Consequently, Lessee shall not be required to maintain casualty insurance on any contents of any building or other structure, and shall not be required to maintain casualty insurance on all improvements on the Leased Premises. Instead, Lessee shall at all times throughout the Term maintain fire, casualty, and extended coverage insurance covering only the Hartwell Depot Building and the Rio's Mexican Café/All Aboard Travel building, and only in an amount not less than the full replacement cost of the Hartwell Depot Building and the Rio's Mexican Café/All Aboard Travel building, which policies shall have deductibles not higher than the deductibles customarily carried on similar buildings in the surrounding locality and which policies shall list Lessor as the insured. Such coverage shall be provided by insurance companies chosen by Lessee and reasonably satisfactory to Lessor and licensed to issue insurance in the state in which the property is located. Every such policy of insurance shall contain provisions for thirty (30) days written notice to Lessor of any cancellation, non-renewal or modification to the policy. All such insurance policies shall be

issued by a properly licensed insurer acceptable to Lessor. All costs of insurance with respect to the Leased Premises (including casualty and liability insurance) shall be paid by Lessee, and the Lessor shall have no obligation or liability in this regard. Lessee shall pay the premiums for all such policies required by this Lease in a timely manner.

9.2 **Waiver of Subrogation.** Lessor and Lessee, on behalf of themselves and their respective insurers, hereby waive all causes and rights of recovery against the other and each of their respective officers, employees and agents, for any loss occurring to the property of either of them, regardless of cause or origin. Lessor and Lessee agree that all insurance policies presently existing or obtained after the date hereof, shall include a clause or endorsement to the effect that any such policies shall not be invalidated, nor shall the right of recovery against any party for loss occurring to the Building be impaired, by virtue of such waiver of subrogation, and denying the insurer's rights of subrogation against the other party to the extent such rights have been waived by the insured prior to the occurrence of the injury or loss. Notwithstanding the provisions of this section, however, neither party waives the right to enforce the provisions of this Lease against the other party.

9.3 **Liability Insurance.** Lessee shall procure and maintain in effect at all times during the Term, comprehensive general liability insurance with a combined single limit of liability of at least One Million and 00/100 Dollars (\$1,000,000.00), which policy shall list Lessor as an additional insured, and shall not exclude coverage for activity within fifty (50) feet of a railroad track. Lessee shall furnish certificates of such insurance to Lessor promptly upon receipt of written request thereof. Any such policy shall be primary and non-contributory.

9.4 **Lessor as Insured or Additional Insured.** Lessor shall be the insured on any and all casualty policies, and shall be named on each liability policy as an additional co-insured party.

9.5 **Proof of Insurance.** At the commencement of this Lease, and subsequently from time to time upon Lessor's request, Lessee shall provide to Lessor proof of any such insurance obtained by Lessee by delivering to Lessor a certificate evidencing such insurance coverage.

ARTICLE X: INDEMNIFICATION

10.1 **Indemnity By Lessee.** Lessee agrees to indemnify, defend and hold Lessor harmless from and against any loss, cost, liability, damage or expense, including without limitation, reasonable attorney's fees incurred in connection with or arising from: (a) Lessee's use, occupancy, or possession of the Leased Premises, including, but not limited to, the negligence of Lessee or its employees, agents, contractors, invitees, or licensees in or on the Premises other than the act or omission of Lessor; and/or (b) Lessee's failure to carry out its obligations under the Lease.

10.2 **Indemnity By Lessor.** Lessor agrees to indemnify, defend and hold Lessee harmless from and against any loss, cost, liability, damage or expense, including without limitation, reasonable attorney's fees incurred in connection with or arising from: (a) Any

negligence of Lessor or its employees, agents or contractors in or on the Premises, other than the act or omission of Lessee; and/or (b) Lessor's failure to carry out its obligations under this Lease.

10.3 Cooperation and Information. In carrying out their respective obligations to indemnify, defend, and hold the other harmless under the provisions of **Subsections 10.1 and 10.2**, Lessor and Lessee shall cooperate with each other in all respects, including without limitation, promptly notifying the other of any action or event which may reasonably be expected to be the basis of a claim or a suit for which the other is obligated to indemnify, defend, and hold harmless under the provisions hereof, and supplying the other with all information and documentation available to it relating to the same.

ARTICLE XI: CONDEMNATION

11.1 Termination. If at any time during the Term all or any portion of any Building shall be condemned or taken for public or quasi-public use, or if any portion of the Lot, Building or Premises is so condemned or taken, which would materially affect Lessee's ability to conduct normal business operations on the Premises, this Lease shall automatically terminate as of the earlier of the date of the vesting of title, or the date of dispossession of Lessee as a result of such condemnation or taking.

11.2 Partial Taking. In the event of a partial condemnation or taking that does not result in a termination of this Lease in accordance with the provisions of **Section 11.1** hereof, the amount of Rent payable each month shall not abate, but the total owed by Lessee as rent, as provided in **Section 3.1(g)** of this Lease, shall abate by an amount equal to the condemnation award or other amounts paid to Lessor in connection with such condemnation or taking, and as a result, Regular Rent shall be payable for a shorter period of time, the Last Regular Rent Payment shall be due sooner, and Final Rent shall be payable for a longer period of time.

11.3 Temporary Taking. If at any time during the Term a substantial portion of the Building is condemned or taken for a public or quasi-public use for a limited period of taking time, this Lease shall remain in full force and effect, and the amount of Rent payable each month shall not abate,; provided, however, that the total owed by Lessee as rent, as provided in **Section 3.1(g)** of this Lease, shall abate by an amount equal to any condemnation award or other amounts paid to Lessor in connection with such condemnation or taking, and as a result, Regular Rent shall be payable for a shorter period of time, the Last Regular Rent Payment shall be due sooner, and Final Rent shall be payable for a longer period of time.

11.4 Awards. Lessor shall be entitled to the entire award resulting from any such condemnation or taking, including without limitation, any portion of any award attributable to the value of the leasehold estate created by this Lease; provided, however, that Lessee reserves to itself any portion of any award attributable to Lessee's Property, its relocation expenses, or the interruption or damage to its business, and further provided that the total owed by Lessee as rent, as provided in **Section 3.1(g)** of this Lease, shall abate by an amount equal to the condemnation award or other amounts paid to Lessor in connection with such condemnation or taking, and as a result, Regular Rent shall be payable for a shorter period of time, the Last Regular Rent Payment shall be due sooner, and Final Rent shall be payable for a longer period of time.

ARTICLE XII: FIRE AND CASUALTY

12.1 **Lessee's Right to Terminate Lease due to Fire or Other Casualty.** If at any time during the Term, more than twenty-five percent (25%) of the Premises are damaged or destroyed by fire or other casualty, or if any portion of the Lot, Building or Premises is so damaged or destroyed, and such damage or destruction materially affects Lessee's ability to use the Premises for Lessee's purposes, Lessee may elect to terminate the Lease by so notifying the Lessor within thirty (30) days after the date of the damage or destruction. Notification of termination by Lessee must specify a date for termination that shall be not less than thirty (30) days from the date of such notice. If Lessee terminates this Lease pursuant to this provision, then Lessee shall pay to Lessor any insurance proceeds paid to Lessee due to damage to the Premises, up to a maximum of the amount of Total Rent provided in **Section 3.1(g)** of this Lease, and Lessee shall be entitled to retain any such insurance proceeds in excess of such Total Rent.

12.2 **Abatement of Rent.** During a ninety (90) day period following the damage or destruction of the Building or Premises, Lessee's obligation to pay Rent shall be abated, commencing on the date of such damage or destruction, in the proportion that the area of the part of the Premises is so damaged or destroyed or rendered untenable bears to the total area of the Premises. Thereafter, Lessee shall continue to pay full Annual Rent until the full amount contemplated in **Section 3.1(g)** is paid in full.

ARTICLE XIII: ASSIGNMENT AND SUBLETTING

13.1 **Consent Required.** Lessee shall not sublet any portion of the Premises or assign, mortgage, pledge or transfer any of its rights with respect to any of its rights or interest created by this Lease without Lessor's prior written consent in each instance, which consent shall be given or withheld as hereinafter provided, except by operation of law.

13.2 **Procedure.** If Lessee desires at any time to sublet any portion of the Premises or assign, mortgage, pledge or transfer this Lease or any of Lessee's rights or interest created by this Lease, Lessee shall give advance written notice to Lessor of Lessee's desire to do so, and the terms and provisions of the proposed assignment or sublease. Lessor shall, within thirty (30) days after receipt of such notice, provide Lessee with written notice of Lessor's consent to or disapproval of the proposed assignment, subletting, mortgage, pledge or transfer (any such disapproval specifying in writing the objections Lessor has to the proposed assignment, sublease, mortgage, pledge or transfer). In the event Lessor fails to provide any written notice of disapproval to Lessee as aforesaid within said thirty (30) day period, Lessor shall be deemed to have consented to the proposed assignment, sublease, mortgage, pledge or transfer. Consent by Lessor to any assignment, subletting, mortgage, pledge or transfer by Lessee shall not relieve Lessee of any obligation to be performed by Lessee under this Lease, and Lessee shall remain fully bound and obligated under the terms of this Lease.

ARTICLE XIV: DEFAULT

14.1 **Events of Default.** An Event of Default shall be deemed to have occurred hereunder if:

- (a) Lessee shall fail to pay any monthly installment of Rent due, as described in **Section 3.1** of this Lease, or fail to maintain insurance as required by **Sections 9.1 or 9.3** of this Lease;
- (b) Lessee breaches or fails to comply with any term, provision, condition, or covenant of this Lease, other than the obligation to pay Rent and maintain insurance, as described in **Section 14.1(a)**;
- (c) Lessee's interest in the Lease or the Premises shall be subjected to any attachment, levy, or sale pursuant to any execution, order or decree entered or filed against Lessee in any legal proceeding and such execution, order or decree shall not be vacated within fifteen (15) days of entry thereof or shall not be appealed (and diligently pursued) so as to stay enforcement thereof;
- (d) Lessee shall make an assignment for the benefit of creditors; or
- (e) An involuntary petition under the United States Bankruptcy Code is filed against Lessee and not dismissed within one hundred twenty (120) days.

14.2 Remedies. Upon the occurrence of an event of default, and after affording Lessee any cure period required by **Section 14.3**, then Lessor shall have the option to do and perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted it by law or in equity or by this Lease:

- (a) Lessor, with or without terminating this Lease, may upon reasonable notice and without unreasonably interfering with the operation of Lessee, thereafter re-enter the Premises and correct or repair any condition which shall constitute a failure on Lessee's part to keep, observe, perform, satisfy, or abide by any term, condition, covenant, agreement, or obligation of this Lease or of any notice given Lessee by Lessor pursuant to the terms of this Lease, and Lessee shall fully reimburse and compensate Lessor on demand.
- (b) Lessor may immediately or at any time thereafter demand in writing that Lessee vacate the Premises and thereupon Lessee shall vacate the Premises and remove therefrom all property thereon belonging to or placed on the Premises by, at the direction of, or with consent of Lessee within thirty (30) days of receipt by Lessee of such notice from Lessor, whereupon Lessor shall have the right to re-enter and take possession of the Premises. Any such demand, re-entry and taking possession of the Premises by Lessor shall constitute an acceptance by Lessor of a surrender of this Lease and of the Premises by Lessee and shall constitute a termination of this Lease by Lessor.

14.3 Right to Cure. If Lessor declares a default, then Lessor shall give Lessee written notice, in accordance with **Section 17.8** of this Agreement, specifying with particularity the default or condition unsatisfied. Before exercising any remedies on account of such default, Lessor shall give Lessee the following period of time, depending on the nature of the default, after Lessee's receipt of written notice of default, to cure such default before Lessor utilizes any remedies under this Agreement:

- (a) If the event of default is one described in **Section 14.1(a)**, or one which may be cured by Lessee's payment of money to a third party, then Lessee shall be afforded ten (10) days after its receipt of written notice of such default;
- (b) If the event of default is one described in **Section 14.1(b)**, **Section 14.1(d)**, or **Section 14.1(e)**, then Lessee shall be afforded thirty (30) days after its receipt of written notice of such default (or, if any such event of default is not susceptible to cure within such thirty [30]-day period, then Lessee shall be afforded a longer cure period, but only as long as Lessee promptly commences and diligently pursues such cure, and in no event shall the cure period with respect to any such event of default exceed one hundred twenty [120] days); and
- (c) If the event of default is one described in **Section 14.1(c)**, then Lessee shall be afforded the time period set forth in said **Section 14.1(c)** after its receipt of written notice of such default.

14.4 Remedies Cumulative. The exercise by Lessor of any one or more of the rights and remedies provided in this Lease shall not prevent the subsequent exercise by Lessor of any one or more of the other rights and remedies herein provided. All remedies provided for in this Lease are cumulative and may, at the election of Lessor, be exercised alternatively, successively, or in any other manner and are in addition to any other rights provided for or allowed by law or in equity.

14.5 Lessee's Right to Terminate. Lessee shall have the right to terminate this Lease at any time after giving written notice to Lessor at least thirty (30) days in advance of the date of such termination and paying to Lessor an early termination fee in the amount of SIX HUNDRED and NO/100's DOLLARS (\$600.00). Additionally, Lessee shall be entitled to terminate this Lease at any time, without any penalty or payment, after giving written notice to Lessor at least thirty (30) days in advance of the date of such termination, if (a) Best Powder, L.L.C. or its successor uses or occupies the Best Powder Premises in a way that unreasonably interferes with Lessee's intended use of any part of the Premises, or if Best Powder claims the right to use and occupy any portion of the Leased Premises, or (c) Hartwell First United Methodist Church asserts, either under one or more of the Church Licenses or otherwise, any rights, powers, privileges, or interest that would, in Purchaser's sole opinion and discretion, prevent or interfere with Purchaser's proposed use of the Leased Premises or any portion thereof. Lessee shall be obligated to pay rent through the date of any such termination.

ARTICLE XV: SUBORDINATION

15.1 **Subordination to Mortgages.** Lessee agrees that upon the request of the Lessor it will subordinate this Lease to the lien of any mortgage, security deed, or deed of trust that may now or hereafter exist, for which the Building or Lessor's interest in the Premises or this Lease is pledged as security, provided that the mortgagees, grantees or beneficiaries named in such mortgages, security deeds, or deeds of trust agree in writing (a) to recognize the interest of Lessee under this Lease, (b) that, so long as Lessee shall perform its obligations under this Lease, the rights of Lessee hereunder shall remain in full force and effect, and (c) that they will not disturb Lessee's occupancy of the Premises under this Lease in the event of foreclosure or other action taken under the mortgage, security deed or deed of trust if Lessee is not then in default. Lessee shall execute and deliver to Lessor all instruments Lessor reasonably deems necessary to evidence and give effect to any such subordination, provided that no such instrument shall alter any of the terms, covenants or conditions of this Lease, and provided that said instrument shall contain the covenants of the lender as aforesaid.

15.2 **Estoppel Certificates.** Either party will at any time, from time to time, within thirty (30) days after receipt of a written request from the other party, execute and deliver to the requesting party a certificate stating, to the extent applicable, that: (a) the Lease is in full force and effect and unmodified (or if there have been any modifications, specifying the date and nature thereof); (b) to the certifying party's knowledge, it has no defenses, offsets, or counterclaims against its obligations to pay Rent (with respect to a Lessee estoppel) and to perform its other obligations under this Lease; (c) to its knowledge, there are no uncured defaults of the requesting party under this Lease; and (d) the dates to which Rent has been paid.

15.3 **Payment of Encumbrances.** Lessee acknowledges that Lessor may subsequently mortgage and encumber the Premises from time to time during the term of this Lease. During the term of this Lease, Lessor shall make, in a timely manner, any and all payments required by any and all loans or debts secured by the Premises.

ARTICLE XVI: LESSEE OPTION

16.1 **Generally.** In consideration of this Lease, and for Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, and the mutual covenants and obligations set forth in this Agreement, and on the terms and conditions hereinafter set forth, Lessor hereby grants to Lessee an option to purchase the Premises (including the real estate and improvements) and Personal Property from Lessor for the purchase price set forth in **Section 16.3** of this Lease, payable in cash or certified funds (the "Lessee Option").

16.2 **Term.** Beginning with Lessee's making the Last Regular Rent Payment, provided that Lessee has at such time paid to Lessor the Total Rent provided in **Section 3.1(g)** of this Lease, and ending on the termination of this Lease (this period of time is referred to as the "Lessee Option Term"), then Lessee shall have the right to purchase the Leased Premises and the Personal Property, under the terms and conditions set forth in this **Article XVI**. When this Lease terminates, unless Lessee has exercised this Lessee Option as provided in **Section 16.6** of this

Lease, this Lessee Option shall terminate automatically, without any further action by either party, and Lessee shall have no further rights under this article.

16.3 **Purchase Price.** The purchase price for the Leased Premises and the Personal Property shall be ONE and NO/100's DOLLAR (\$1.00), payable at closing in cash or certified funds.

16.4 **Effect of Termination of Lease.** If this Lease is terminated by Lessor or Lessee, then this Lessee Option shall automatically terminate and be void and of no force or effect.

16.5 **Exercise of Lessee Option.** At any time during the Lessee Option Term, Lessee shall be entitled to exercise this Lessee Option by delivering to Lessor, in accordance with **Section 17.8** of this Agreement, a written notice stating Lessee's intent to exercise this Lessee Option and close the sale and purchase of the Premises at a mutually agreeable time no more than one hundred twenty (120) days and no less than thirty (30) days from the date of the notice, which time can be beyond the term of this Lease. The exercise of this Lessee Option shall ripen this instrument into a contract for the sale and purchase of the Premises without the necessity of any further instrument in writing except as provided herein, and shall automatically terminate this Lease without penalty.

16.6 **Conveyance of Leased Premises; Warranty of Title; Exceptions.** Lessor covenants that, upon the exercise of this Lessee Option by Lessee or its permitted assigns, and upon payment of the agreed purchase price as provided herein, Lessor shall convey, and cause to be conveyed to Lessee, good, unencumbered, marketable title to the Premises, in fee simple, and that Lessor will warrant the title to the Premises, by limited covenants of warranty, against the claims and demands of all persons claiming by, through, or under Lessor, subject only to the lien of ad valorem taxes for the year in which the sale is closed and any liens or encumbrances caused or created by Lessee. The purchase price shall be payable in full at Closing. Taxes for the year in which the sale is closed shall be prorated between the parties. Lessor shall pay all costs of preparing the warranty deed and bill of sale, Georgia Real Estate Transfer Tax, the costs of curing any title objections caused by Lessor, and the cost of paying and satisfying any liens or encumbrances created by Lessor. Lessee shall pay all costs of title examination, title insurance, escrow fees, Lessee's attorney's fees, and all other costs associated with the closing. Any such agreement to convey is conditioned upon approval by the appropriate regulatory body having jurisdiction over Lessor's right of way at the time of the proposed closing. Lessee will bear all cost and expense associated with obtaining such approval. If Lessee determines that the costs of such approval are excessive, in Lessee's discretion, then Lessee shall be entitled to extend this Lease for an additional period of fifty (50) years.

16.7 **Lessor Financing.** Intentionally Omitted.

16.8 **No Credit for Rent Payments.** Lessee shall not receive a credit at closing or otherwise for any rental payments made hereunder.

16.9 **Purchase "As-Is".** Lessee shall purchase the Premises in "as is" condition "with all faults" and specifically and expressly without any warranties, representations or guaranties, of

any kind, oral or written, expressed or implied, concerning the Premises from or on behalf of Lessor, except as expressly provided herein. Lessor shall not under any circumstances be required to repair, modify or alter any condition of the Premises.

16.10 **Merger of Estates.** The exercise of this Lessee Option shall not terminate this Lease or modify or reduce Lessee's obligations under this Lease. Upon closing of the purchase of the Premises pursuant to this Lessee Option, however, this Lease shall terminate and be of no further force and effect.

ARTICLE XVII: MISCELLANEOUS

17.1 **Holding Over.** If Lessee holds over beyond the expiration of the Term, Lessee shall occupy the Premises as a lessee at will on a month-to-month basis upon all of the terms and conditions of this Lease, but shall pay to Lessor each month that Lessee holds over, the sum of one hundred fifty percent (150.0%) of the Annual Rent for the last month prior to such expiration, plus Additional Rent as set forth in this Lease.

17.2 **Severability.** If any provision or provisions of this Lease shall be determined to any extent to be void or unenforceable by any court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each other provision of this Lease shall be valid and enforced to the full extent permitted by law.

17.3 **No Waivers.** The failure of Lessor or Lessee to insist upon the strict performance of any obligation of the other under this Lease, or to exercise any right, power, or remedy consequent upon a breach hereof, shall not constitute a waiver or relinquishment of any such obligation. A receipt of Annual Rent or Additional Rent by Lessor, or a payment of Annual Rent or Additional Rent by Lessee, with knowledge of the breach of any obligation hereunder, shall not constitute a waiver or relinquishment of any such obligation.

17.4 **Remedies Cumulative.** Except as expressly set forth in this Lease, the specific remedies to which Lessor or Lessee may resort are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be entitled in law or in equity.

17.5 **Modifications in Writing.** This Lease may not be amended in any way, and no such purported amendment shall be effective, except by a writing executed by Lessor and Lessee.

17.6 **Entire Agreement.** This Lease contains all of the agreements of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, agreements, and other dealings between them with respect to the same. Any representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter of this Agreement not contained in this Agreement or in some other written agreement or instrument between the parties shall not be of any force or effect and shall not be relied upon by any party.

17.7 **Headings.** The headings of the paragraphs of this Agreement are for convenience of reference only, are not to be considered a part hereof, and shall have no bearing on the construction or interpretation of this Agreement.

17.8 **Notices.** Any notice, consent, request, demand, or other communication given, or required to be given under this Lease, shall be effective only if given in writing, sent by (a) nationally recognized, overnight courier service, delivery fee prepaid, (b) registered or certified mail, return receipt requested, postage prepaid, or (c) delivered by hand, if to Lessor, to Lessor's address set forth in the opening paragraph of this Lease; and if Lessee, to Lessee's address as set forth in the opening paragraph of this Lease, or to such other address as either party may specify to the other by written notice. Any such notice, approval, consent, request, demand, or election shall be deemed to have been given upon receipt, or if receipt is refused, then when delivery was attempted.

17.9 **Binding Effect.** The terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Lessor and Lessee, and except as otherwise provided herein, their respective successors and assigns.

17.10 **Submission Not an Offer.** The submission of this Lease or a summary of any of its provisions for examination and review, does not constitute an offer to lease on the terms of this Lease or those provisions, and this Lease shall not be effective or binding on Lessor or Lessee until execution and delivery by both.

17.11 **Recording of Lease.** The parties agree to record this Lease in the Office of the Clerk of the Superior Court of Hart County, Georgia.

17.12 **Attorney's Fees.** In the event Lessor or Lessee is required to obtain the services of an attorney to enforce the provisions of this Lease resulting in litigation, the prevailing party shall be entitled to reimbursement by the other of its reasonable attorney's fees and costs.

17.13 **Exhibits.** The following exhibits are a part of this Lease and incorporated herein by reference:

- Exhibit A – Legal Description of Leased Premises
- Exhibit A-1 – Drawing of Leased Premises
- Exhibit B – Legal Description of Best Powder Premises
- Exhibit C – Drawing of Hartwell First United Methodist Church License Areas

17.14 **Recitals Made Part of Agreement.** The recital of facts on the first page of this instrument is hereby made a part of this Lease as if fully set forth herein.

17.15 **Counterparts.** This Lease may be simultaneously executed in duplicate counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

17.16 **Time of Essence.** Time is expressly declared to be of the essence of this Lease.

17.17 **Compliance with Laws and Regulations.** Lessee shall, at its own expense, comply with all laws, orders and requirements of all governmental entities concerning the use and occupancy of the Leased Premises.

17.18 **Governing Law.** This Lease shall be interpreted and construed under and in accordance with the laws of the State of Georgia.

17.19 **Construction of Lease.** Lessor and Lessee acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, restrictions, and effects of all the provisions of this Lease. Should any provision of this Lease require judicial interpretation, it is agreed that the court interpreting or construing the provision shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document.

(This Space Intentionally Left Blank)

IN WITNESS WHEREOF, the parties have caused their authorized agents to execute this Agreement on behalf of each party on the day and year first above written.

Lessor:

HARTWELL RAILROAD COMPANY,
a Georgia Business Corporation

By: B.R. Anderson Sr.
B.R. Anderson, Sr., Its President and
Authorized Agent

Attest: Claire A. Treadwell
Claire A. Treadwell, Its Secretary and
Authorized Agent

[CORPORATE SEAL]

Signed, Sealed and Delivered
in the Presence of:

Nicholas
Unofficial Witness

Nancy L. Anderson
Notary Public, Wilton County, GA

[CORPORATE SEAL]
My Comm. Expires 12, 2016


(Signatures Continued on Next Page)

THE GREAT WALTON RAILROAD
COMPANY, a Georgia Business Corporation

By: B.R. Anderson, Sr.
B.R. Anderson, Sr., Its President and
Authorized Agent

Attest: M.K. Anderson
M.K. Anderson, Its Secretary and
Authorized Agent

[CORPORATE SEAL]

Signed, sealed and delivered in the
presence of:

Nicki Ryz
Unofficial Witness

Nancy L. Anderson
Notary Public, Walton County, GA

[NOTARY SEAL AFFIXED]

My Comm. Expires: April 12, 2016



(Signatures Continued on Next Page)

Lessee:

TORCH OF HARTWELL, INC.,
a Georgia Nonprofit Corporation

By: Mary L. Gidley
Mary Gidley, Its President and
Authorized Agent

Attest: Sharon B. Morris
Sharon B. Morris, Its ~~Secretary~~ and
Authorized Agent Treasurer

[CORPORATE SEAL]

Signed, Sealed and Delivered
in the Presence of:

Nicki Kyr
Unofficial Witness
Robert L. Fisher
Notary Public, Fisher County, GA

[NOTARY SEAL]

My Comm. Expires: 11/15/2016

Server Data:Rob:FULL COPY:Real Estate:T:TORCH pf Harwell RR:Lease Agreement May 20 2015 Final.docx

EXHIBIT A
TO LEASE AGREEMENT WITH OPTION
BETWEEN HARTWELL RAILROAD COMPANY AND
THE GREAT WALTON RAILROAD COMPANY, AS LESSOR, AND
TORCH OF HARTWELL, INC., AS LESSEE,
DATED MAY _____, 2015

(Legal Description of Leased Premises)

TRACT ONE:

All that tract or parcel of land, with improvements thereon, lying and being in the 111²th G.M. District of Hart County, Georgia, in the corporate limits of the City of Hartwell, more particularly described in that certain plat of survey prepared by W. Slate Bauknight, Registered Land Surveyor, dated January 11, 2013, said plat being expressly by reference incorporated into and made a part of this description.

This property is bounded now or formerly as follows, as shown on said plat: On the Northeast by property of Jane Holmes, property of Glasco Properties, LLC, property of Worley, property of Moore, property of Marett, property of Purcell, property of Hart Community Theater, property of Louise Bisso, other property of Louise Bisso, property of Sharif H. Farhan, property of Lee Carter, Jr., property of Rita Smith, et al., property of The Hartwell Railroad, property of Eddie Corcino, property of Jeff Sadler, property of 13 Depot Street, LLC, property of Hart Outfitters, LLC, and other property of Hart Outfitters, LLC; on the Southeast by the northwestern boundary of the right-of-way for South Forest Avenue and property of Eddie Corcino; on the Southwest by property of Francis J. Trainor, property of Eddie Corcino, and the northeastern boundary of the right-of-way for Railroad Street; and on the northwest by the southeastern boundary of the right-of-way for South Jackson Street and the southwestern boundary of the right-of-way for South Webb Street.

This property comprises (1) the right-of-way for the Hartwell Railroad extending from South Forest Avenue to South Webb Street in the corporate limits of the City of Hartwell, Georgia, and (2) the land between the northeastern side of Railroad Street and the right-of-way for the Hartwell Railroad, except for the lots owned by Eddie Corcino and Pamela Fields, which land is known as Tax Parcel I57H 000, using the present system of the Hart County Tax Assessors for designating parcels of real property for purposes of ad valorem taxation in Hart County, Georgia.

TRACT TWO:

All that tract or parcel of land, with improvements thereon, lying and being in the 111²th G.M. District of Hart County, Georgia, in the corporate limits of the City of Hartwell, known as 41 Depot Street and the location of the former California Mexican Café (also known as Rio's Mexican Café) on Depot Street, bounded now or formerly as follows: On the Northeast by the southeastern boundary of the right-of-way for Depot Street; on the Southeast by property of

Eddie Corcino; on the southwest by the right-of-way for the Hartwell Railroad; and on the Northwest by property of Rita Smith, et al.

This property is known as Tax Parcel I57D 100 001, using the present system of the Hart County Tax Assessors for designating parcels of real property for purposes of ad valorem taxation in Hart County, Georgia.

The above-described Tracts One and Two include the following property:

All that tract or parcel of land, with improvements thereon, lying and being in the 1112th G.M. District of Hart County, Georgia, in the corporate limits of the City of Hartwell, on the northeast side of Railroad Street, containing 0.540 acre (23,501 square feet), more or less, and being more particularly described in a plat of survey prepared by Aaron P. Blomberg, Registered Land Surveyor, dated May 21, 2014, recorded in Plat Book _____, at Page _____, in the Office of the Clerk of the Superior Court of Hart County, Georgia, said plat and the recording thereof being expressly by reference incorporated into and made a part of this description

This property is more particularly described as follows:

BEGINNING at a PK nail found in the City of Hartwell, Georgia, at the intersection of the centerline of Railroad Street and the centerline of South Forest Avenue;

THENCE running North 70° 36' 40" West for a distance of 219.93 feet to an iron pin set at the intersection of the northeastern boundary of the right-of-way for Railroad Street with the common boundary between property of The Great Walton Railway Company and property of Eddie Corcino and the TRUE POINT OF BEGINNING;

THENCE turning and running 73° 54' 15" West along the northeastern boundary of the right-of-way for Railroad Street North for a distance of 145.11 feet to a PK nail set on such boundary;

THENCE turning and running North 13° 40' 05" East for a distance of 68.36 feet to a PK nail set on the southwestern boundary of the right-of-way for the Hartwell Railroad;

THENCE running North 13° 40' 05" East for a distance of 31.11 feet to a point on the northeastern boundary of the right-of-way for the Hartwell Railroad;

THENCE turning and running South 77° 13' 35" East along the northeastern boundary of the right-of-way for the Hartwell Railroad for a distance of 33.71 feet to a point at a building corner on such boundary;

THENCE turning and running South 76° 54' 00" East along the northeastern boundary of the right-of-way for the Hartwell Railroad for a distance of 30.60 feet to a point at a building corner on such boundary;

THENCE turning and running North 13° 12' 10" East along a party wall for a distance of 60.60 feet to a point on the southwestern boundary of the right-of-way (80 feet wide) for Depot Street;

THENCE turning and running South 76° 55' 55" East along the southwestern boundary of the right-of-way (80 feet wide) for Depot Street for a distance of 81.73 feet to a point at a building corner on such boundary;

THENCE turning and running South 13° 46' 35" West along a party wall for a distance of 60.81 feet to a point at a building corner on the northeastern boundary of the right-of-way (80 feet wide) for the Hartwell Railroad;

THENCE turning and running South 76° 45' 55" East along the northeastern boundary of the right-of-way for the Hartwell Railroad for a distance of 77.99 feet to a ½-inch open top pipe found at a building corner on such boundary;

THENCE running South 76° 40' 05" East along the northeastern boundary of the right-of-way for the Hartwell Railroad for a distance of 102.77 feet to a #4 re-bar found at a building corner on the northwestern boundary of the right-of-way (80 feet wide) for South Forest Avenue;

THENCE turning and running South 13° 35' 30" West along the northwestern boundary of the right-of-way (80 feet wide) for South Forest Avenue for a distance of 11.77 feet to a PK nail set on such boundary;

THENCE turning and running North 76° 40' 05" West along the southwestern boundary of the right-of-way for the Hartwell Railroad for a distance of 86.00 feet to an iron pin set;

THENCE turning and running South 13° 35' 55" West along the boundary of the right-of-way for the Hartwell Railroad for a distance of 6.96 feet to an iron pin set;

THENCE turning and running North 76° 40' 05" West along the southwestern boundary of the right-of-way for the Hartwell Railroad for a distance of 34.00 feet to an iron pin set;

THENCE turning and running South 13° 35' 30" West along the boundary of the right-of-way for the Hartwell Railroad for a distance of 12.50 feet to a point;

THENCE turning and running North 76° 39' 40" West along the southwestern boundary of the right-of-way for the Hartwell Railroad for a distance of 60.89 feet to an iron pin set;

THENCE turning and running South 13° 55' 35" West for a distance of 76.00 feet to an iron pin set on the northeastern boundary of the right-of-way for Railroad Street and the TRUE POINT OF BEGINNING;

This property is a portion of the property described in a Limited Warranty Deed from Hartwell Railway Company to The Great Walton Railroad Company, dated May 5, 1990,

recorded in Deed Book 217 at Pages 162-169, in the Office of the Clerk of the Superior Court of Hart County, Georgia, said deed being expressly by reference incorporated into and made a part of this description.

TRACT THREE:

All that tract or parcel of land, with improvements thereon, lying and being in the 1112th G.M. District of Hart County, Georgia, in the corporate limits of the City of Hartwell, Georgia, being the right-of-way for the Hartwell Railroad extending from South Webb Street to Athens Street, and including the railway turntable and any and all other fixtures and equipment.

Tract One, Tract Two, and Tract Three are highlighted in green on the tax map attached to this Agreement as **Exhibit A-1**, which is incorporated into and made a part of this Agreement, as if fully set forth herein.

EXHIBIT A-1
TO LEASE AGREEMENT WITH OPTION
BETWEEN HARTWELL RAILROAD COMPANY AND
THE GREAT WALTON RAILROAD COMPANY, AS LESSOR, AND
TORCH OF HARTWELL, INC., AS LESSEE,
DATED MAY _____, 2015

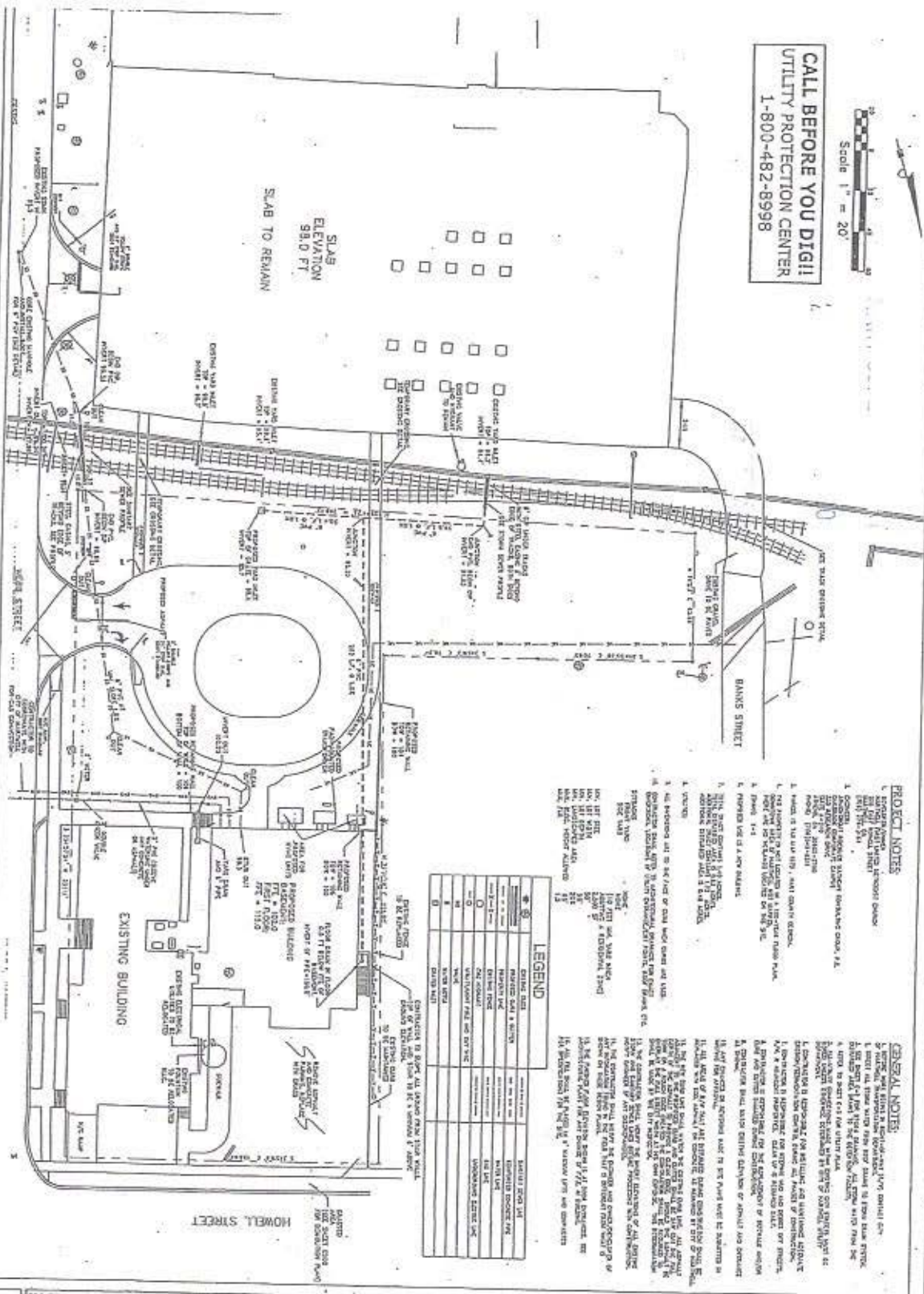
(Drawing of Leased Premises)



2003-03-02

AND 10 REMAIN

SLAB
ELEVATION
99.0 FT



PROJECT NOTES

1. CONCRETE
a. CONCRETE is a mixture of cement, sand, gravel, and water.
b. CONCRETE is used for building structures such as bridges, roads, and foundations.
c. CONCRETE is a hard material that can withstand heavy loads.
2. ROAD
a. ROAD is a path or way for vehicles to travel on.
b. ROAD is made of various materials such as asphalt, concrete, and gravel.
c. ROAD is used for transportation and travel.
3. BRIDGE
a. BRIDGE is a structure that spans a body of water or a deep valley.
b. BRIDGE is used for crossing obstacles and connecting different parts of a landscape.
c. BRIDGE is a vital part of infrastructure and transportation.
4. FOUNDATION
a. FOUNDATION is the base of a building or structure that supports its weight.
b. FOUNDATION is made of concrete or other strong materials.
c. FOUNDATION is essential for the stability and safety of a building.
5. GRAVEL
a. GRAVEL is a coarse aggregate of small stones or pebbles.
b. GRAVEL is used in construction for roads, foundations, and drainage systems.
c. GRAVEL is a common material found in nature.
6. ASPHALT
a. ASPHALT is a dark, sticky material used for paving roads and highways.
b. ASPHALT is made from petroleum products and is known for its durability.
c. ASPHALT is a common material used in construction.
7. PAVEMENT
a. PAVEMENT is the surface layer of a road or highway.
b. PAVEMENT is made of various materials such as asphalt, concrete, and gravel.
c. PAVEMENT is essential for the smooth and safe travel of vehicles.
8. STRUCTURE
a. STRUCTURE is a framework or system of parts that support a load.
b. STRUCTURE can be made of various materials such as steel, concrete, and wood.
c. STRUCTURE is essential for the stability and safety of buildings and bridges.
9. LOAD
a. LOAD is a force or weight that is applied to a structure.
b. LOAD can be caused by various factors such as traffic, wind, and earthquakes.
c. LOAD is a critical factor in the design and construction of structures.
10. DESIGN
a. DESIGN is the process of creating a plan or drawing for a structure.
b. DESIGN involves considering various factors such as materials, loads, and safety.
c. DESIGN is essential for the successful construction of any structure.
11. CONSTRUCTION
a. CONSTRUCTION is the process of building a structure.
b. CONSTRUCTION involves various steps such as excavation, foundation, and framing.
c. CONSTRUCTION is a complex process that requires skill and expertise.
12. INFRASTRUCTURE
a. INFRASTRUCTURE is the basic physical and organizational structures needed for the operation of a society.
b. INFRASTRUCTURE includes roads, bridges, and other transportation systems.
c. INFRASTRUCTURE is essential for the development and growth of a country.
13. TRANSPORTATION
a. TRANSPORTATION is the movement of people or goods from one place to another.
b. TRANSPORTATION relies on various modes of transport such as cars, buses, and trains.
c. TRANSPORTATION is a vital part of daily life and commerce.
14. SAFETY
a. SAFETY is the state of being free from harm or danger.
b. SAFETY is a top priority in construction and transportation.
c. SAFETY measures should be taken to ensure the well-being of everyone involved.
15. QUALITY
a. QUALITY is the degree of excellence or standard of something.
b. QUALITY is an important factor in the construction and transportation industries.
c. QUALITY control measures should be implemented to ensure high standards.

GENERAL NOTES:

- [illegible]

LEGEND

[illegible]

C100 PROJECT 00067 JULY 2007
HARTWELL FIRST UNITED METHODIST CHURCH
220 EAST HOWELL STREET
HARTWELL, GEORGIA



AUBURNROUT ROEBUCK MATTHEY
CONSULTING GROUP, P.C.
EMPLOYMENT-RECRUITING-CONSULTING-TRAINING



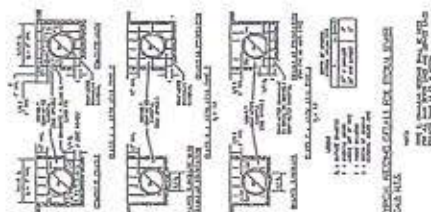
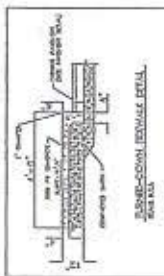
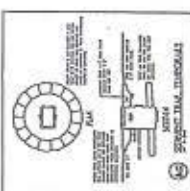
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Scale 1" = 20'

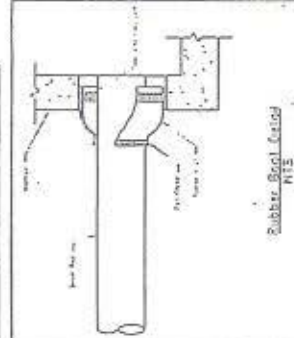
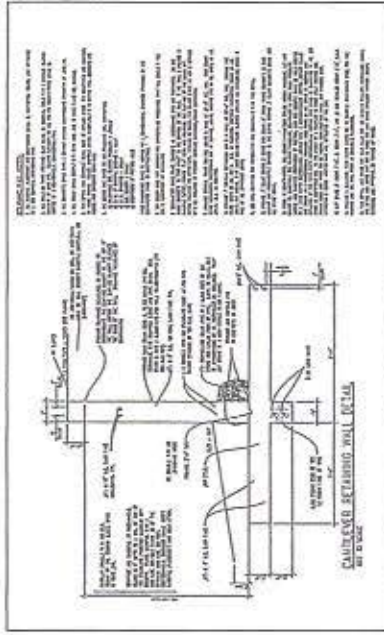
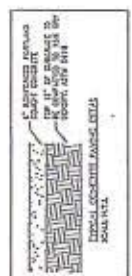
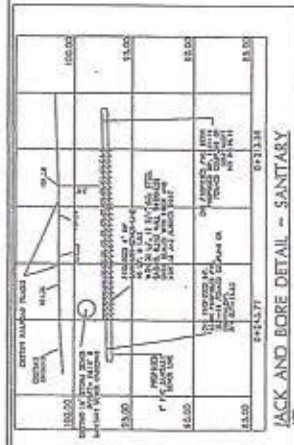


LEGEND	
①	INDICATED ENTRY
②	ALPHABETICALLY LISTED
③	ALPHABETICALLY LISTED
④	OTHER MATERIAL
⑤	QUALITY CONTROL AND SURVEILLANCE
⑥	WATER TREATMENT
⑦	WATER TREATMENT
⑧	WATER TREATMENT
⑨	WATER TREATMENT
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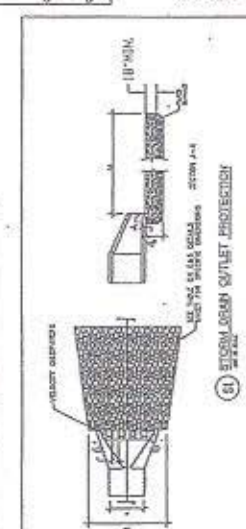
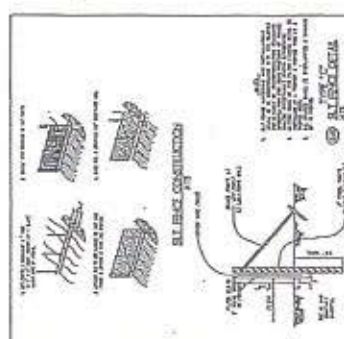
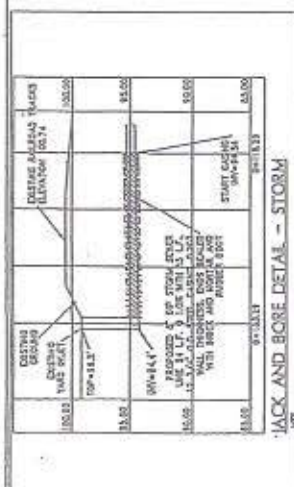
Technical drawing of a typical formwork detail for a wall. The drawing shows a cross-section of a wall formwork system. It includes a vertical section on the left and a horizontal section on the right. The vertical section shows a wall with a thickness of 12 inches, a height of 10 feet, and a width of 12 feet. The horizontal section shows a wall with a thickness of 12 inches, a height of 10 feet, and a width of 12 feet. The drawing is labeled "TYPICAL FORMWORK DETAIL" and "SECTION".



STATION, ADDRESS, CITY, STATE, ZIP
NAME
DATE



Outlet Protection Size:
 $d = 15^\circ$
 $3d = 45^\circ$
 $L = 9'$
 $H = 12.75'$
 $50 \text{ Riser} = 3'$



STORM DRAIN OUTLET PROTECTION

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1-800-482-8998

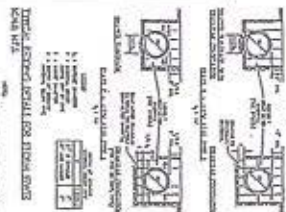
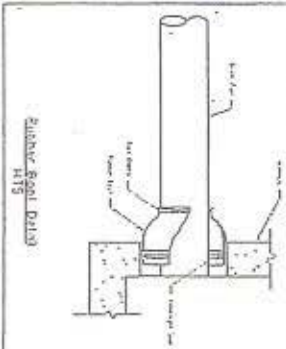
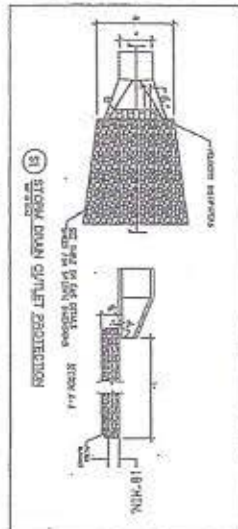
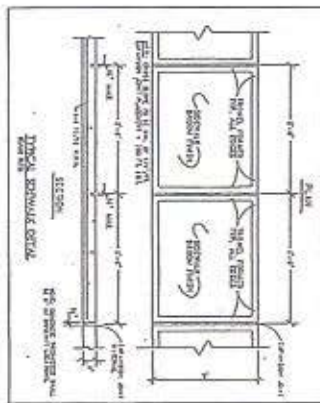
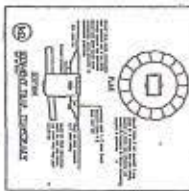
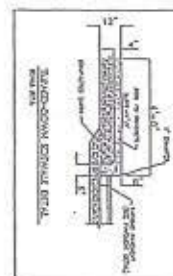
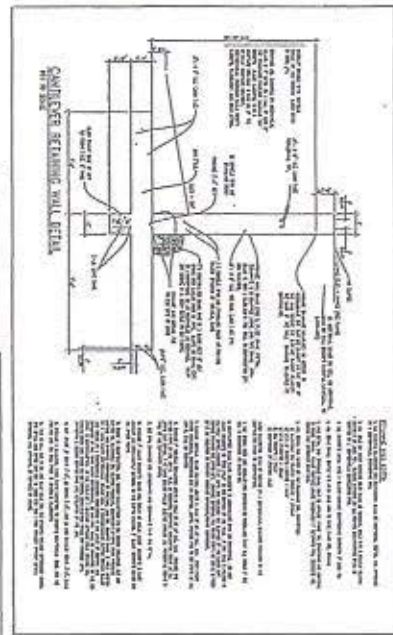
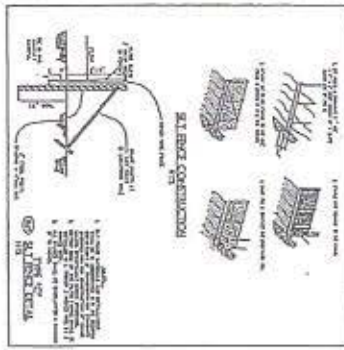
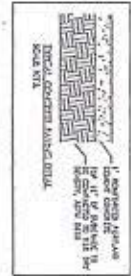
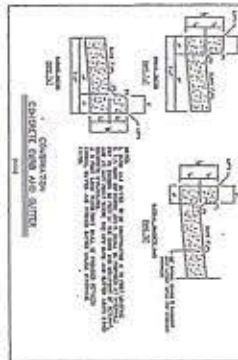
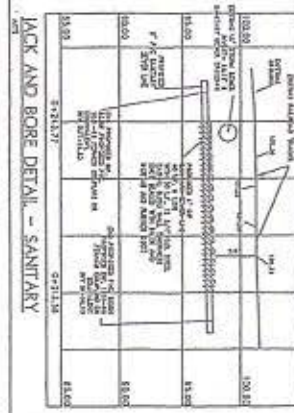


EXHIBIT C
TO LEASE AGREEMENT WITH OPTION
BETWEEN HARTWELL RAILROAD COMPANY AND
THE GREAT WALTON RAILROAD COMPANY, AS LESSOR, AND
TORCH OF HARTWELL, INC., AS LESSEE,
DATED MAY _____, 2015

(Drawing of Hartwell First United Methodist Church License Areas)

EXHIBIT B
TO LEASE AGREEMENT WITH OPTION
BETWEEN HARTWELL RAILROAD COMPANY AND
THE GREAT WALTON RAILROAD COMPANY, AS LESSOR, AND
TORCH OF HARTWELL, INC., AS LESSEE,
DATED MAY , 2015

(Legal Description of Best Powder Premises)

All that tract or parcel of land, with improvements thereon, lying and being in the 11 1/2th G.M. District of Hart County, Georgia, in the corporate limits of the City of Hartwell, on the northeast side of Railroad Street, containing 0.420 acre, more or less, and being more particularly described in a plat of survey prepared by Aaron P. Blomberg, Registered Land Surveyor, dated July 2, 2009, recorded in Deed Book 641, at Page 350, in the Office of the Clerk of the Superior Court of Hart County, Georgia, said plat and the recording thereof being expressly by reference incorporated into and made a part of this description

This property is more particularly described as follows:

BEGINNING at an iron pin set in the City of Hartwell, Georgia, at the intersection of the northeastern boundary of the right-of-way for Railroad Street and the northwestern boundary of the above-described property and the TRUE POINT OF BEGINNING;

THENCE running North 15° 30' 55" East for a distance of 45.01 feet to a point on the centerline of the right-of-way for the Hartwell Railroad;

THENCE turning and running North 88° 56' 00" East along the centerline of the right-of-way for the Hartwell Railroad for a distance of 30.73 feet to a point on the centerline of such right-of-way;

THENCE turning and running South 89° 20' 40" East along the centerline of the right-of-way for the Hartwell Railroad for a distance of 40.64 feet to a point on the centerline of such right-of-way;

THENCE running and running South 86° 52' 45" East along the centerline of the right-of-way for the Hartwell Railroad for a distance of 41.39 feet to a point on the centerline of such right-of-way;

THENCE turning and running South 84° 25' 55" East along the centerline of the right-of-way for the Hartwell Railroad for a distance of 34.26 feet to a point on the centerline of such right-of-way;

THENCE turning and running South 81° 23' 55" East along the centerline of the right-of-way for the Hartwell Railroad for a distance of 22.38 feet to a point on the centerline of such right-of-way;



EXHIBIT A-1

AB 1242

GWRC EXHIBIT 21



Photograph 0: GWRC Mainline looking westward from the east side of Jackson Street
Reflecting historic loading platform and the Hartwell Depot on the left



Photograph 1: GWRC Mainline at Jackson Street Intersection along with Industry Track to Left and intersection with Runaround Track to the Right



Photograph 2: GWRC Mainline and Runaround Track Between Jackson Street and Webb Street



Photograph 3: GWRC Mainline and Runaround Track Intersection Between Jackson Street and Webb Street



Photograph 4: GWRC Mainline and Runaround Track



Photograph 5: GWRC Runaround Track at Eastern Edge of Webb Street showing Proposed preliminary realignment with Runaround Track at Western Edge of Webb Street



Photograph 6: GWRC Mainline and Runaround Track on West Side of Webb Street



Photograph 7: GWRC Mainline and parallel Runaround Track



Photograph 8: Intersection of GWRC Mainline and parallel Runaround Tracks



Photograph 9: Intersection of GWRC Mainline and parallel Runaround Tracks reflecting
Rails laid prior to June 30, 1916



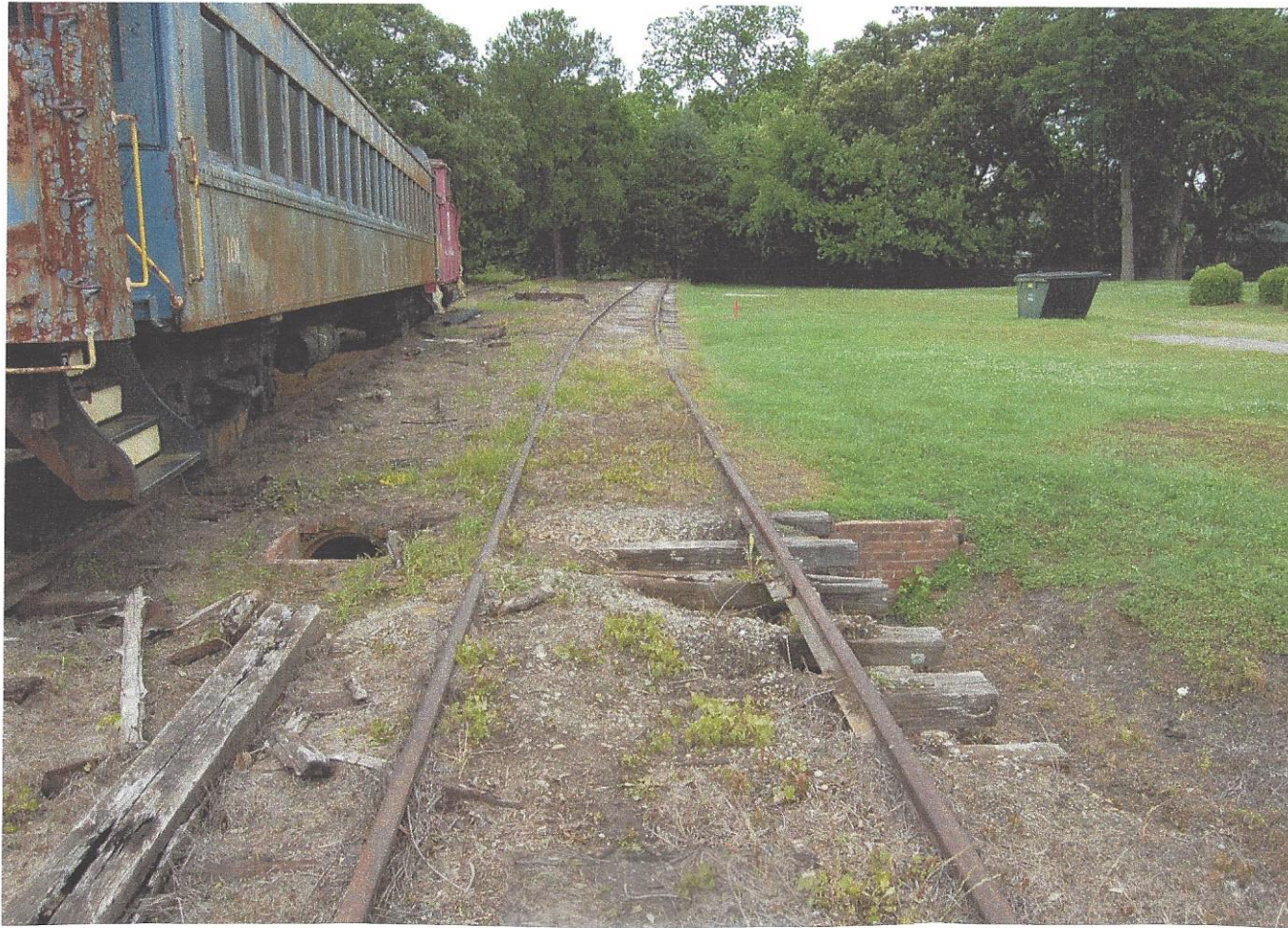
Photograph 10: GWRC Mainline Track with Beginning of Runaround Track to East at bottom and Beginning of Spur Track to the West to Turntable with rail cars parked on Mainline



Photograph 11: GWRC Mainline and Turntable Spur at intersection of extension of Chandler Street
Partially obscured by gravel temporarily placed by Hartwell First



Photograph 12: GWRC Mainline and Spur Track (partially obscured by dead grass) located to the West of Chandler Street



Photograph 13: Railcars parked on GWRC Mainline and drainage system beneath Turntable Spur Track
And Running Parallel with Mainline Track



Photograph 13a: Drainage system reflecting culvert running parallel to Main Track



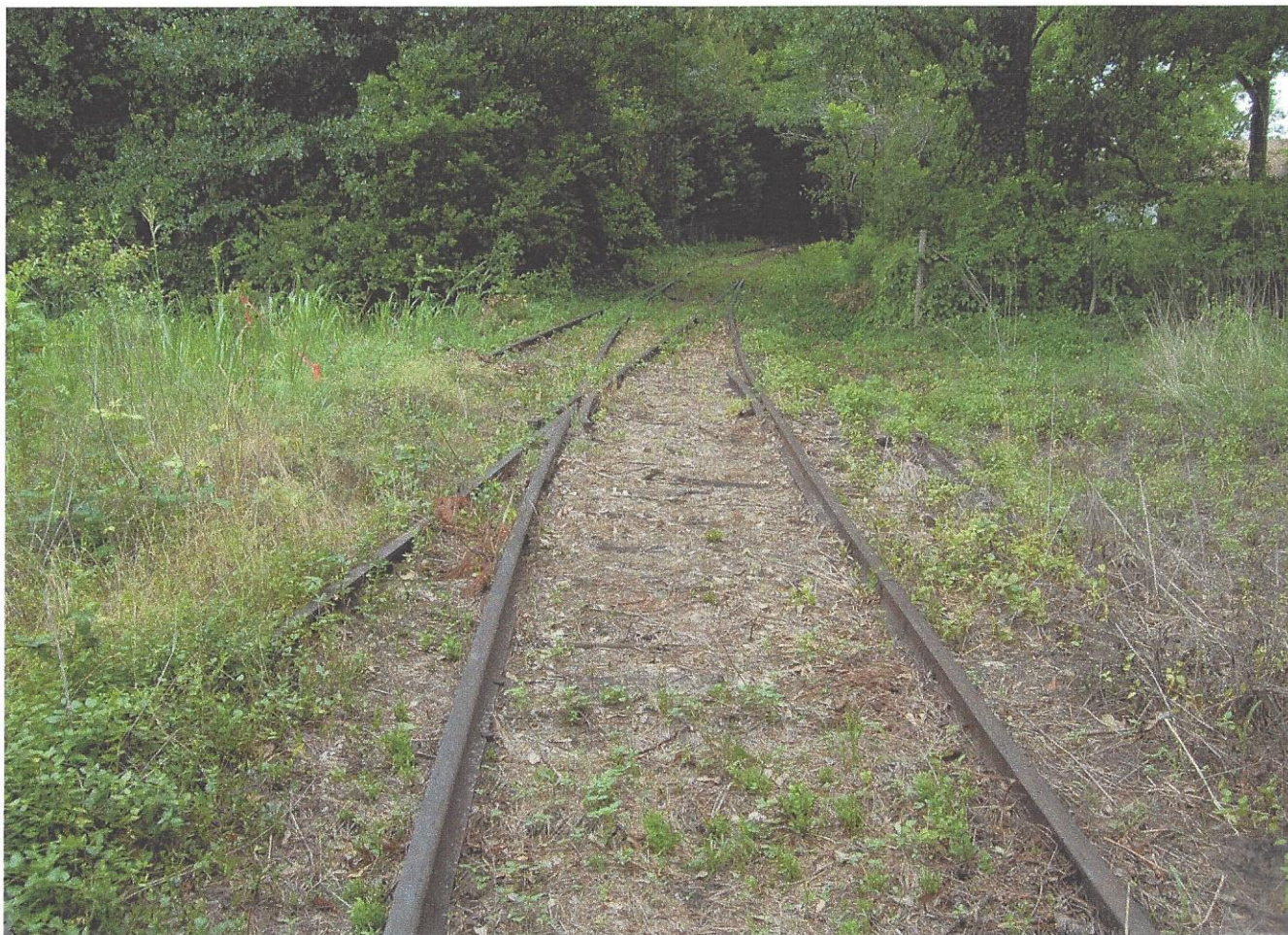
Photograph 14: GWRC Mainline Track extending beyond west end of Caboose parked on Mainline.



Photograph 15: GWRC Mainline



Photograph 16: GWRC Mainline Track with beginning point of Spur Track that led to former Hartwell Mills facilities located to the south of GWRC Mainline



Photograph 17: GWRC Mainline Track with close-up shot of former
Hartwell Mills Spur Track



Photograph 18: GWRC Mainline Track and beginning point of former Hartwell Mills Spur Track



Photograph 19: GWRC Mainline Track with car passing over Mainline Track
at Athens Street to the West



Photograph 20: GWRC Mainline



Photograph 21: GWRC Mainline near Athens Street Crossing



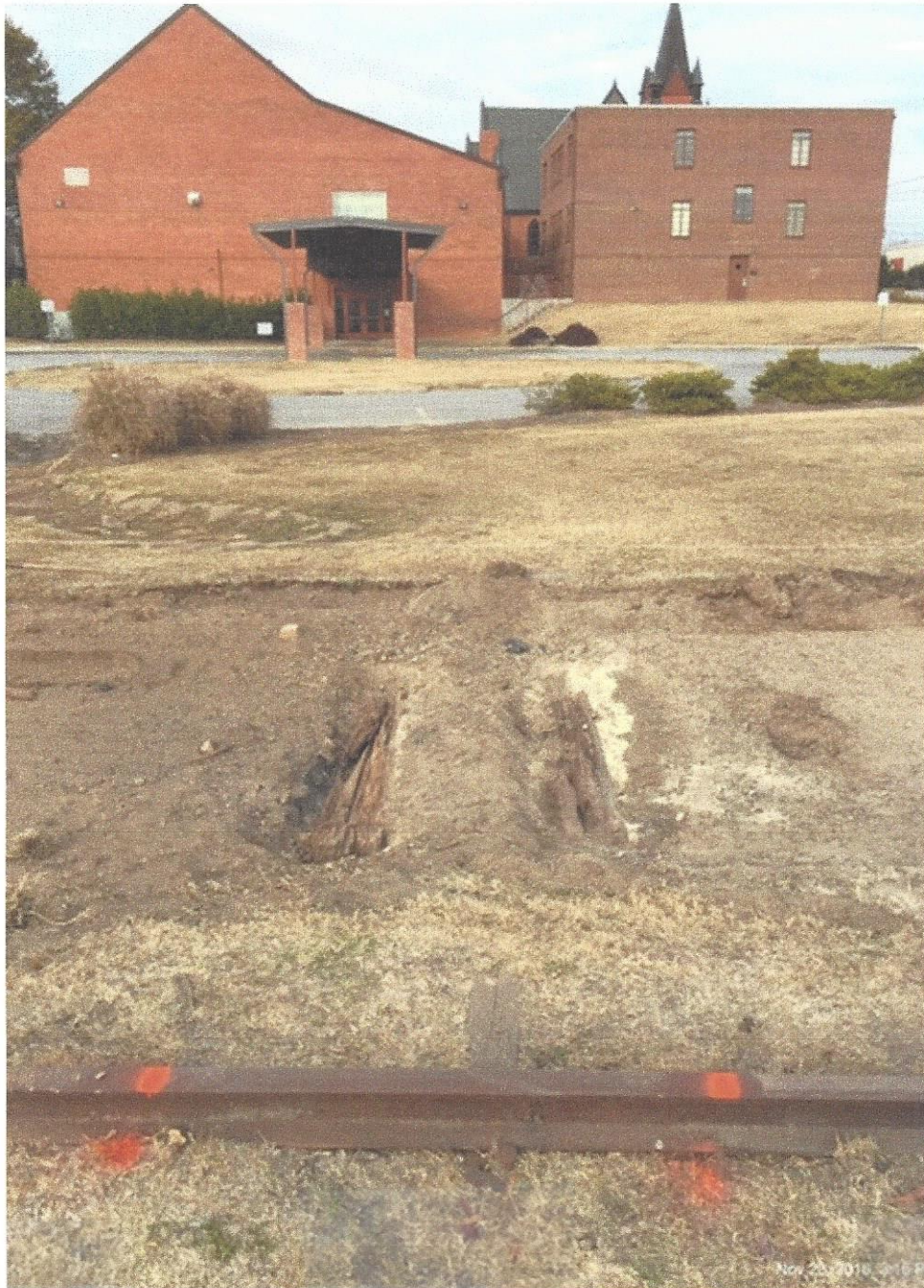
Photograph 22: GWRC Mainline near Athens Street Crossing



Photograph 23: GWRC Mainline Crossing Athens Street and extension of Mainline on the West Side of Athens Street



Photograph 24: Athens Street intersection looking to the East



Photograph 25: Photograph of uncovered crossties and ballast located on Runaround Track right-of-way with GWRC Mainline Track in foreground, dated November 23, 2016



Photograph 26: Photograph of uncovered crossties and ballast located on Runaround Track right-of-way with GWRC Mainline Track in background, dated November 23, 2016