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ENTERED
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April 14, 2017
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Public Record

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

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

Dear Ms. Brown:

Enclosed for e-filing is the Application for Adverse Abandonment being filed Hartwell First United Methodist Church ("Applicant"). Because of the size of the files, the Application is being filed in the following three parts:

Volume I – Application and Exhibit
Volume II-A – Appendices 1-9
Volume II-B – Appendices 10-15

The Board previously granted Applicant a waiver of the filing fees in this proceeding.

FILING FEE WAIVED

March 16, 2017
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Please let me know if there are any questions regarding this filing.

Respectfully,

CLARK HILL PLC



Eric M. Hocky

EMH/e
Encl.

cc: All Persons Shown on Service List (w/encl.)

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**

APPLICATION FOR ADVERSE ABANDONMENT

VOLUME I

(Includes Color Copies)

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Attorneys for
Hartwell First United Methodist Church

Dated: April 14, 2017

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**

APPLICATION FOR ADVERSE ABANDONMENT

Hartwell First United Methodist Church (“Hartwell First” or “Applicant”) is filing this application seeking authority from the Board for the adverse abandonment and discontinuance of the approximately 0.25 miles of railroad tracks and associated right of way between Athens Street and the end of line at South Forest Avenue, in Hartwell, Hart County, Georgia (the “Line Segment”) believed to be currently owned by The Great Walton Railroad Company (reporting mark “GRWR”).¹ A map of the Line Segment, and a map showing the general location of the Line Segment, are attached hereto as Exhibit A.² The Line Segment is the stub end of the “Hartwell Line” that runs between Bowersville, Georgia and Hartwell, Georgia. This Application is filed in accordance with the requirements of 49 CFR Part 1152, and the Board’s decision served on August 29, 2016 (the “Waiver Decision”) granting Applicant certain waivers and exemptions.

¹ As discussed more fully in the Background section below, based on additional research, Applicant does not believe that GRWR’s affiliated, but separate company, Hartwell Railroad Company (reporting mark “HRT”) has any ownership or operating rights with respect to the Line. However, because GRWR and HRT have not clarified their position in this regard (and may be confused themselves), in this Application, Hartwell First will refer generally to the “Railroad” to mean whichever or both railroads (GRWR or HRT) that the Board finds has any ownership, common carrier rights or obligations with respect to the Line Segment.

² “Exhibits” are included at the end of Volume I of the Application. “Appendices” are included in Volume II of the Application.

The reason for the proposed adverse abandonment is that Applicant, as the owner of the property on both sides of (and underlying) the Line Segment wishes to develop additional facilities on its property that will allow it to better serve the community of Hartwell through its various ministries. As the Railroad owns only an easement for railroad purposes for the Line Segment (at least for the portion that bisects the Applicant's property), abandonment and discontinuance of the common carrier obligations with respect to the Line Segment would allow Hartwell First to quiet title to the property that it owns underlying Line Segment, have the tracks removed and pursue its development plans.

The Line Segment has not been used to provide local rail service for over 20 years, is largely overgrown, and public crossings have been removed and/or closed by the Georgia Department of Transportation ("GaDOT"). Moreover, the Railroad has entered into a 99-year lease for the Line Segment and adjacent property with a local non-profit for development of a park, walking path and farmers' market. Thus, the Line Segment cannot currently be used to conduct rail service even if the Railroad wanted to do so. The Applicant does not believe that the public convenience and necessity require that the Line Segment remain as part of the national railroad system, and therefore abandonment and discontinuance is appropriate. The Railroad has refused voluntarily to seek abandonment or discontinuance authority from the Board. Accordingly, Applicant is seeking adverse abandonment authority so that it can proceed under Georgia state law to quiet title to the Line Segment to the extent it bisects the Applicant's property.

Background

A. Origins of the Hartwell Line

The original Hartwell Railroad Company was chartered in 1878 to build a narrow gauge rail line between Hartwell and Bowersville (the “Hartwell Line”). As relevant to the Line Segment (from Athens Street to the end of the line at South Forest Avenue), in 1880, the original Hartwell Railroad (a) acquired a 20 foot wide right of way from Athens Street to what is now known as Bank Avenue, (b) condemned a 20 foot right of way behind what is now the main church building from Bank Avenue to Webb Street, and (c) acquired a 12 foot right of way from Webb Street to South Forest Avenue.³ In 1898, the railroad was reorganized as the original Hartwell Railway. In this general period, Southern Railway gained control of the line, converted the line to standard gauge, and sold the line in 1924. Pursuant to the Valuation Act of 1913, a valuation map of the Hartwell Line, including the Line Segment, was prepared in June 1916. Copies of relevant sections of the valuation map, including several enlarged sections of portions of the Line Segment, are attached hereto as Appendix 1. Only a single track was built within the right of way of the Line Segment (nor is there room within the right of way for more than one track).⁴

At some point prior to 1919, a short spur track was constructed to the north of the main line track behind what is now the main building of Hartwell First. The “north spur” was constructed on property that was then owned by Farmers Union, and appears to have been built to serve its warehouse. See Appendix 1 (showing Farmers Union warehouse, and erroneously

³ Applicant has copies of the deeds available; however, as they relate to the state law issues of the Railroad’s title to the right of way and not directly to the abandonment/discontinuance issues addressed herein, they are not being submitted with the Application.

⁴ The valuation map shows a short spur track within the right of way ending west of Webb Street. However, to the knowledge of Applicant, a second track never existed within the 20 foot right of way.

showing the north spur within the 20 foot right of way). The spur was stub-ended and ran only to Webb Street. Applicant has not located any deed or other document that gave the original Hartwell Railway any title to or interest in the land where the spur track was actually located on the Farmers Union property. In approximately 1919, an industrial track was constructed by and to serve the Clinkscates warehouse on the east side of Webb Street, across Webb Street and connected to the north spur track. The track was owned by the Clinkscates (and now by its successors), and can be terminated by either party on 60 days' notice. *See Clinkscates Agreement, §9*, a copy of which is attached as Appendix 2. At some later time, the Clinkscates industrial track was connected back to the main line track near Jackson Street. Applicant has not located any documentation giving the Railroad any property rights to make that connection.

B. 1990 Acquisition by GRWR

Attached as Appendix 3 is a Federal Register notice relating to a 1990 exemption giving "The Great Walton Railroad Company d/b/a Hartwell Railroad Company" trackage rights to operate over the tracks of the original Hartwell Railway between Bowersville and Hartwell. *Great Walton Railroad Co., d/b/a Hartwell Railroad Co. – Trackage Rights Exemption – Hartwell Railway Co.*, ICC Finance Docket No. 31626, 53 FR 12958 (April 6, 1990). The Federal Register notice merely refers to the rail line "between milepost 0.0 at Bowersville, GA, and milepost 10.5, at Hartwell, GA." Applicant was able to obtain from the Board's archives all of the filings made by GRWR in the trackage rights proceeding. Copies of the filings are attached hereto as Appendix 4. Applicant has not located any other Interstate Commerce Commission ("ICC") decisions or notices, or Federal Register notices, related to the acquisition of the Hartwell Line by either GRWR or HRT, or to any other operating authority granted by the ICC.

While the notice of exemption indicates that GRWR was intending to purchase the rail line and other assets of the Hartwell Railway, 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.⁵ The notice of exemption included a draft acquisition agreement between the original Hartwell Railway and GRWR. *See* Appendix 4. Subsequently, in May, 1990, the railroad right of way was deeded by the original Hartwell Railway to GRWR. Although the HRT website indicates that HRT owns the Hartwell Line (and the adjacent line from Elberton to Toccoa, with a connection at Bowersville) (*see* selected pages of the joint GRWR-HRT website, www.greatwaltonrailroad.com.html, attached hereto as Appendix 6), in fact the separate corporate entity “Hartwell Railroad Company” was not formed until 1995, and accordingly could not have been the purchaser of the Hartwell Railway assets. *See* Georgia corporate information page attached hereto as Appendix 7. Thus, it appears that only GRWR has any ownership interest in the Hartwell Line, and that HRT has none.⁶

Even if GRWR’s trackage rights were properly authorized (*see* footnote 5), those trackage rights would have merged with the ownership of the line and been of no further effect

⁵ The notice of exemption indicates that GRWR would file a copy of the trackage rights agreement once it was signed (as was required by the applicable regulations at the time). However, the archived documents provided by the STB do not show that the trackage rights agreement was ever filed with the ICC. Accordingly, it appears that even the trackage rights were never properly exempted.

⁶ Part of the confusion of what entity owns the Hartwell Line comes from the GRWR trackage rights filing which indicates that it would be doing business as “Hartwell Railroad Company” and then goes on to reference itself as Hartwell Railroad Company. GRWR has not registered “Hartwell Railroad Company” as a fictitious name. Additionally, even the owner of the Railroad does not seem to be clear on which company owns the Hartwell Line. *See* Appendix 8, Testimony of Anderson (owner and President of the Railroad), p. 6 (indicating that the Hartwell Line was bought by a new company, when it was in fact purchased by the existing GRWR).

once the acquisition was made. Moreover, as noted above, GRWR never received authority to acquire and operate the Hartwell Line, and accordingly it appears that no railroad currently has authority from the ICC or STB to own or operate the Hartwell Line, including the Line Segment.

HRT does appear to own the connecting rail line between Toccoa and Elberton, Georgia. That line is operated by GRWR under trackage rights granted by HRT. *See Hartwell Railroad Company – Acquisition and Operation Exemption – Line of Norfolk Southern Railway Company*, ICC Finance Docket No. 32675, 60 FR 16665 (March 31, 1995); *Great Walton Railroad Company, Inc. d/b/a Hartwell Railroad Company – Trackage Rights Exemption – Hartwell Railroad Company*, ICC Finance Docket No. 32676, 60 FR 16664 (March 31, 1995). HRT filed to acquire the Toccoa line as a “non-carrier” (which is believed to be correct despite the indication on the website that HRT was the owner and operator of the Hartwell Line). In acquiring the Toccoa line and granting trackage rights to GRWR, the ICC notice indicates that HRT represented that GRWR was an unaffiliated carrier. *Hartwell Railroad Company – Acquisition and Operation Exemption – Line of Norfolk Southern Railway Company*, ICC Finance Docket No. 32675, 60 FR 16665 (March 31, 1995). However, this was clearly not the case as is evident from their joint website. *See* Appendix 6. *See also* Appendix 8, Testimony of Anderson, p. 8-9 (acknowledging that he bought several railroads). Applicant has not found any evidence that the common owners of HRT and GRWR filed with either the ICC or the Board for authority under 49 U.S.C. §11323 to control more than one carrier.⁷ While not directly at issue in this proceeding, the failure of the owners of GRWR, HRT and the Athens Line to comply with

⁷ HRT and GRWR also seem to be under common control with The Athens Line, LLC (“ABR”) which became a railroad in 2001. *See* Appendix 6; *The Athens Line, LLC – Lease and Operation Exemption – Norfolk Southern Railway Company and Central of Georgia Railroad Company*, STB Finance Docket No. 34118 (served December 27, 2001). According to the STB notice, the lines leased by ABR are operated by GRWR although GRWR did not seek separate authority to operate the lines.

statutory and Board requirements should be taken into account when assessing the credibility of claims that they may make in response to the Application.

C. Rail Service on the Line Segment since 1990; Condition of the Line Segment

Service was provided by the Railroad over the Line Segment to customers at the end of the line for several years after it was acquired in 1990. However, the last service to a local customer on the Line Segment was in 1996. *See* Appendix 8, Testimony of Bishop (former Vice President and General Manager of Railroad), pp. 148-149.⁸

In 2008, the Railroad voluntarily took up and removed the north spur. Hartwell First went into possession of the land underlying the north spur, landscaped the area, and occupied it exclusively from that point forward. The Railroad has made allegations that at the time they removed the track, they reserved the right to reinstall the north spur at some time in the future; however, the Railroad in the court proceedings discussed below did not produce any evidence that demonstrates that they indicated to Hartwell First that they had any such intent or reserved any such right. Hartwell First denies that the Railroad gave any such indication to Hartwell First.

In 2009, GaDOT removed the crossings where the Line Segment and the north spur crossed Webb Street, and repaved the road. GaDOT also installed curbing along the roadway. The Railroad sent a self-serving letter to GaDOT demanding that GaDOT send a response agreeing to reinstall the crossings if they were ever required. A copy of the letter is attached hereto as Appendix 9. However, to the best of Applicant's knowledge, GaDOT never responded and has not agreed that the crossing could be reinstalled without the Railroad seeking authority to install a new road crossing. GaDOT has also advised Applicant that if the crossing of Athens

⁸ As discussed more fully below, Applicant and the Railroad have been in litigation in state court and federal court regarding the Railroad's attempt to build a new spur on the property of Hartwell First. A hearing was held in federal court on February 9, 2017. Appendix 8 contains excerpts of the transcript of that hearing.

Street were to be reactivated for rail use, FRA would likely require clearing of the property to restore sight lines (*see* photographs included in Appendix 10) and coordination with the nearby traffic signal at Athens and Howell Streets. The railroad crossing at Jackson Street is also currently considered by GaDOT as closed, and would need to be reactivated by the Railroad.

As noted above, the Line Segment has not been used to provide local rail service since 1996, and the current condition of the Line Segment reflects its non-use. Attached as Appendix 10 are a number of current photographs of the Line Segment. Additional photographs were also included as part of the Environmental and Historic Report (“EHR”) filed with the Board on November 15, 2016. The Line Segment clearly is not currently in a condition that can support rail operations at any level.

In 2015, the Railroad entered into a 99 year lease of all of the right of way from Athens Street to the end of the Line, for use by the public as a park, children’s playground, farmer’s market and walking trail. *See* TORCH lease attached hereto as Appendix 11. The lease gives the non-profit group TORCH the right to purchase the entire span of tracks for \$1.00 at the end of the lease. The lease serves as a clear signal that the Railroad had no plans or expectations of resuming commercial operations on the track.

The lease provides that TORCH “may use and occupy the premises and personal property in any manner permitted by applicable law”, and sets forth the Railroads’ acknowledgement that “Lessee intends to develop the leased premises and personal property as a public park, and Lessor expressly approves such use.” Appendix 11, §4.1, p. 4. The lease also acknowledges the current state of non-use and track disrepair, and that the “Lessee shall not be obligated to make any alterations or additions to the Lease Premises.” Appendix 11, §8.1, p. 7. The lease gives TORCH complete control of the tracks and the right of way, and relieves the Railroad of any

maintenance duty. "Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises." Appendix 11, §§8.1-8.2, p. 7.

In the hearing held as part of the federal Litigation, the Railroad's former Vice President and General Manager David Bishop, candidly admitted that the lease did not contain any reservation of rights, or even any acknowledgement by the parties to the lease that the Railroad had any intention at all to resume commercial rail traffic on the long dormant Line Segment. Appendix 8, Testimony of Bishop, pp. 139-140, 143. Indeed, the Lease gives TORCH the right to remove the tracks between Webb Street and South Forest Avenue, and specifically relieved TORCH of any obligation "to reinstall the rails in such a manner and to such specifications that the rails are able to support rail traffic." Appendix 11, §5.1, p. 4. Moreover, the width of the leased right of way (20 feet wide from Athens Street to Webb Street, and 12 feet wide from Webb Street to the end of the line), surely cannot safely accommodate rail operations together with the proposed public uses permitted by the lease. The lease clearly indicates 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.

D. Church acquisition of Yarn Plant

In 2002, Hartwell First acquired by gift, the land adjoining the north side of the Line Segment, and began planning an expansion project. In 2007, Hartwell First acquired the land adjoining the Line Segment on the south side. Representatives of the Church had conversations with the Railroad owner, and the Church was permitted to cross the railroad right of way. Hartwell First has since built a parking lot, gymnasium and children's playground on the south side of the right of way. An aerial photo showing the Hartwell First development of the property

in relation to the Line Segment is attached as Appendix 12. Those attending services or other activities in the main building must cross the main line to go between the parking lot and the main building, as must preschoolers that go between their school in the main building and the gymnasium and playground.

Hartwell First currently owns property and buildings on both sides of the Line Segment (as shown on Exhibit A). Hartwell First wishes to develop these adjacent properties for additional facilities as part of a unified campus that would allow congregants and users of the facilities to move freely between the buildings. Once Hartwell First learned that the Railroad had leased the right of way to TORCH and apparently had no plans to resume rail service over the Line Segment, Hartwell First attempted to negotiate with the Railroad in an effort to have the Railroad voluntarily seek abandonment and discontinuance authority from the Board. However, such negotiations were unsuccessful. Accordingly, Hartwell First decided to proceed with this application for adverse abandonment and discontinuance authority. If the application is granted, then Hartwell First will seek a determination in state court that the railroad easement through its property is no longer effective, to quiet title to the right of way. However, in order to do so, it first needs to remove the Board's jurisdiction over the right of way.

E. Rail Service on the Hartwell Line

While at one time many years ago there may have been railroad shippers located along the Line Segment, changes in the ownership of the properties and the character of the area of Hartwell now means that there is no longer any demand for service, or any opportunities for new freight service on or directly from the Line Segment. There has been no local freight service

over the Line Segment for more than 20 years, and the grade crossings at Webb Street have been removed and paved over, and the grade crossing at Jackson Street has been closed, by GaDOT.⁹

The closest current shipper to the Line Segment is Quality Holdings, Inc. (“Quality”) which is located approximately one mile west of Athens Street. The Railroad began providing service to Quality at some point after it acquired the Hartwell Line in 1990. Appendix 8, Testimony of Anderson, p. 7-8. Quality has a short industrial side track on its property that can accommodate approximately four cars at a time. Quality received 21 carloads in 2016. Appendix 8, Testimony of Colehower (President and CEO of Quality), p. 110. The Railroad provides service by pulling the cars down the Hartwell Line from Bowersville, and pushing them into Quality’s industrial side track for unloading. Once the cars are unloaded, the Railroad pulls the cars back onto the main line, and pushes them back to Bowersville. Appendix 8, Testimony of Anderson, pp. 42-43. The Railroad has been handling the cars in this manner since at least 2009 when the Webb Street crossings were removed and the Railroad stopped using the “run-around track.” Service to Quality has not entailed or required use of the Line Segment. See Appendix 8, Testimony of Anderson, pp. 24, 27.

New owners acquired Quality in 2015. In 2016, they advised the Railroad that they would be increasing production and the number of rail cars received. They estimate an additional four carloads per year (an average of only one additional inbound carload every three months).¹⁰ Appendix 8, Testimony of Colehower, p.110, 113. The increased carloadings have

⁹ Applicant believes that either HRT or GRWR owns additional parcels of property adjacent to the Line Segment, the ownership of which would not be affected by the proposed abandonment/discontinuance.

¹⁰ Quality is also exploring some business that would have it moving 4-6 carloads annually outbound. Appendix 8, Testimony of Colehower, p. 111. However, Quality would be using the cars it is currently receiving inbound so there would be no additional car movements for the Railroad (it would just be moving loads instead of empties).

already started, and as noted above, the Railroad has continued to serve Quality as set forth above without use of the Line Segment. Quality reports that it is satisfied with the service that it receives. Appendix 8, Testimony of Colehower, p. 113.

Notwithstanding that service has and continues to be provided to Quality, the Railroad (only after Applicant began this proceeding at the Board) advised the Applicant in August 2016 that it planned to rehabilitate its tracks on the Applicant's property because it "needed" to use the tracks to provide service to Quality. A copy of the Railroad's letter is attached as Appendix 13. The Applicant acknowledged that the Railroad had the right to do work on the main line track within its right of way, but advised the Railroad that such work would be at its own risk and that Applicant still intended to proceed with the adverse abandonment and discontinuance proceeding. A copy of Applicant's response is attached as Appendix 14. No rehabilitation work took place at that time.

F. The North Spur Litigation

On Thanksgiving weekend, after Applicant filed and served a notice of intent to proceed with the adverse abandonment and discontinuance proceeding, the Railroad appeared on the property of Hartwell First and began to construct a track along the line of where the north spur track had been removed in 2009. No rehabilitation work was done on the main line track within the Railroad's right of way (except with respect to the lead in to, and the switch to the new spur track), no work was done on the Clinkscapes industrial track, and no work was done (or applied for) with respect to the crossings that had been removed at Webb Street, or the crossings at Athens Street or Jackson Street.

Because the Railroad was constructing track on property of Hartwell First to which the Railroad had no colorable claim to title, Hartwell First immediately filed in state court for, and

obtained, an emergency injunction preventing the Railroad from continuing any construction on the property of Hartwell First outside of the Railroad's 20 foot right of way. A copy of the injunction order is attached hereto as Appendix 15. The Railroad sought to remove the litigation (the "Litigation") to federal court based on preemption. However, after a hearing held on February 9, 2017, the federal court remanded the Litigation back to state court where it, and the injunction, remain. The Railroad (in essence acknowledging that it does not have any title to the property where it attempted to construct a spur track), has now threatened to condemn Hartwell First's property under state law. Hartwell First will oppose any attempts to condemn its property.

As the Railroad made clear in the Litigation, its alleged "need" for the Line Segment was not for providing service to a local customer, or for the use of the Line Segment alone, but rather solely to use the Line Segment as a "run-around" track that allow the Railroad to bring its locomotive and one or two cars that had been pulled from Quality over the Line Segment across Webb Street, to and across Jackson Street where the locomotive would be moved back over the Clinkscates industrial spur, back across Webb Street, and over the newly constructed spur track back to the main line, at which point the locomotive could pull the one or two cars to Bowersville. The "need" ignores that satisfactory and safe service has been provided to Quality by the Railroad, even at increased levels of service, without the use of a run-around track. This "need" also ignores that there is no existing a "run-around track" connected to the Line Segment given that the north spur was voluntarily removed by the Railroad and the Railroad has no title to the property where it seeks to build, and given that there are no crossings at Webb Street for either main line track or to connect the Clinkscates industrial track with any newly constructed spur. Moreover, it has only contractual rights to use the Clinkscates industrial track, and no

known title for the connection of the Clinkscates industrial track to the main line.¹¹ Since there is no run-around track associated with the Line Segment, there is no need for the Railroad to use the Line Segment.

If the Railroad wants to construct a run-around track to assist in its service to Quality, it could certainly choose to do so even if the abandonment and discontinuance of the Line Segment is granted. While no railroad engineering studies have been done, it would appear that the Railroad could either construct an additional track at Quality to create a “wye” 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.

Since common carrier services to or from the Line Segment are no longer required or being requested, the public convenience and necessity do not require that the Line Segment remain as part of the national railroad system, and the Line Segment can and should be abandoned as a line of railroad. Because GRWR has failed and refused to seek the authority itself, Hartwell First has proceeded with this application for adverse abandonment.

Required Information

Pursuant to 49 CFR § 1152.22, Applicant hereby provides the following information related to the proposed adverse abandonment:

(a) General

(1) The exact name of the Applicant is Hartwell First United Methodist Church. The owner of the Line Segment is believed to be The Great Walton Railroad Company (“GRWR”). At least initially, GRWR received authority to operate trackage rights over the Line Segment

¹¹ And of course the Line Segment has been leased to TORCH for other public uses that would be inconsistent with the return of rail service.

“d/b/a Hartwell Railroad Company,” and is believed to still be operating portions of the Hartwell Line in that manner. *Great Walton Railroad Co., d/b/a Hartwell Railroad Co. – Trackage Rights Exemption – Hartwell Railway Co.*, ICC Finance Docket No. 31626, 53 FR 12958 (April 6, 1990). GRWR never received authority to acquire or operate the Hartwell Line, including the Line Segment. As discussed above, GRWR d/b/a Hartwell Railroad Company is a separate and distinct entity from Hartwell Railroad Company (“HRT”) which was incorporated by the same owner in 1995, and which obtained authority from the ICC to acquire and operate a separate line of railroad. *Hartwell Railroad Company – Acquisition and Operation Exemption – Line of Norfolk Southern Railway Company*, ICC Finance Docket No. 32675, 60 FR 16665 (March 31, 1995). HRT has never sought authority from the ICC or the Board to acquire or operate any portion of the Hartwell Line.

(2) The Applicant is not a common carrier by railroad. GRWR is a common carrier by railroad subject to 49 USC Subtitle IV, chapter 105. Applicant believes that GRWR does not have authority to own and operate the Hartwell Line or the Line Segment. GRWR only obtained authority for trackage rights over the Hartwell Line. Once GRWR acquired the assets comprising the Hartwell Line, the trackage rights were no longer effective (trackage rights relate to the rights of one carrier to operate over the facilities of another carrier; a carrier cannot operate trackage rights over itself). Thus, Applicant does not believe that any carrier currently has authority to own and operate the Line Segment.

(3) The relief sought is adverse authority for the abandonment and discontinuance of the Line Segment, an approximately 0.25 mile segment of track between Athens Street and the end of the Hartwell Line. After abandonment and discontinuance of the Line Segment as part of a line of railroad, Hartwell First will seek to terminate the easement and quiet title to the

underlying property to the extent it bisects Hartwell First's property between Athens Street and Webb Street.

(4) A detailed map of the Line Segment is attached as part of Exhibit A. The Line Segment extends approximately 0.25 miles from Athens Street to the end of the Hartwell Line beyond South Forest Avenue. Based on the 1990 GRWR trackage rights filing / authorization, Applicant believes the endpoint is milepost 10.5. GRWR filed a letter with the Board on March 29, 2017, claiming that there is no milepost 10.5. Whether that is the case or not, Applicant seeks abandonment and discontinuance authority to the end of the Hartwell Line, whatever the actual milepost may be.

(5) The system diagram map requirements have been waived. *See* Waiver Decision.

(6) The detailed reasons for seeking adverse abandonment have been set forth in the Background section above. In short, the Applicant wishes to safely develop its property which is currently bisected by the Line Segment. Due to changes in the development of Hartwell, there are no longer any businesses or properties along the Line Segment that require rail service. Since the Line Segment has not been used for many years, and is currently not able to be used for rail service, the Applicant is seeking to have the Line Segment abandoned and discontinued so that it can have the tracks removed¹² and safely develop its property.

(7) The name, title and address of the representative of Applicant to whom correspondence should be sent are: Eric M. Hocky, Esq., Clark Hill PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; phone no.: 215-640-8500; email: ehocky@clarkhill.com.

(8) The Line Segment traverses United States Postal Service ZIP Code 30643.

¹² In response to the EHR, the Georgia State Historic Preservation Officer ("SHPO") raised concerns regarding the removal of the track. Applicant acknowledges that the SHPO's concerns will need to be resolved before the tracks are removed.

(b) – (e) The Board has waived the requirements that Applicant provide information regarding the condition of the properties, service performed, attributable revenue and cost data, and rural and community impact. Waiver Decision, slip op. at 4. Notwithstanding, Applicant is providing what limited information it has on these subjects.

(b) Condition of Properties.

Applicant is not a railroad and does not have the expertise to evaluate fully the condition of the Line Segment. However, 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. Moreover, the Railroad has leased the right of way to TORCH, and has permitted TORCH to remove the tracks east of Webb Street to the end of the line and to re-lay them for “show” and not as capable of handling train service. *See* Appendix 11, §5.1, p. 4. The Line Segment is not currently in operating condition.

(c) Service Provided.

As discussed in the Background, GRWR has not provided local rail service using the Line Segment since 1996 when the last customers on the Line Segment closed. There are no current customers or potential customers located on the Line Segment. No rail service is being or has been provided over the Line Segment since before 2009.¹³

¹³ Since the Board has waived the requirement that this information be provided, Applicant does not believe that it needs to define a “Base Year” under 49 C.F.R. §1152.2(c). However, to the extent a Base Year needs to be defined, Applicant proposes that the Base Year be defined as the most recent calendar year of January 1, 2016 to December 31, 2016.

(d) Revenue and Cost Data.

Since GRWR has not provided service over the Line Segment, there is no revenue attributable to the Line Segment from rail operations.¹⁴

(e) Rural and Community Impact.

(1) There are no known stations on the Line Segment. The Line Segment is located in an urban area of Hartwell, Hart County, GA. Hartwell's population section in 2014 was approximately 4,500. See <http://www.city-data.com/city/Hartwell-Georgia.html>.

(2) There are no known customers on the Line Segment, and the Line Segment is not being used currently to provide service to customers located on the Hartwell Line beyond the Line Segment.

(3) Abandonment and discontinuance of the Line Segment would not affect the service to any customers on the Line Segment (because there are none), or to any customer currently served by the Railroad. Service that meets the needs of Quality can continue as it is being provided today, and in the foreseeable future. There will be no adverse impact on rural or community development. In fact the abandonment and discontinuance would benefit the community development proposed by the Hartwell First and by TORCH.

(4) Because the property underlying the Line Segment is not owned by GRWR (except for the segment beyond Jackson Avenue), and because the property bisects the private property of the Church and other neighboring landowners, the property proposed for abandonment and discontinuance is not appropriate for use for other public purposes. Moreover, Hartwell First as the owner of property between Athens Street and Webb Street is not willing or interested in transferring any of its property.

¹⁴ GRWR may have received rental payments from TORCH related to TORCH's lease of the right of way.

(f) Environmental Impact.

Applicant filed an Environmental and Historic Report with the Board on November 15, 2016, more than 20 days before the filing of this Application.

(g) Passenger Service.

There is no passenger service provided over the Line Segment, nor has there been any passenger service offered over the Line Segment since well before the Railroad acquired the Hartwell Line, including the Line Segment, in 1990.

(h) Additional Information.

No additional information has been required by the Board.

(i) Draft Federal Register Notice.

Attached as Exhibit B is a draft Federal Register notice for publication by the Board. A modified form of Federal Register notice was approved by the Board in the Waiver Decision, slip op. at 4. Applicant has made some additional changes based on its current understanding of the ownership of the Line Segment, to clarify the description of the Line Segment based on the Railroad's concerns about the description used previously, and to correct some typographical errors.

(j) Verification.

An executed verification in the required form is included following the final page of this Application.

Offers of Financial Assistance and Public Use

The Board exempted Applicant from the offer of financial assistance provisions of 49 USC §10904, and from the public use provisions of 49 USC §10905. *See* Waiver Decision, slip op. at 4-5.

Trails Use

The Board deferred a decision on whether the trail use provisions of 49 CFR §1152.29 should apply if the adverse abandonment were granted. *See* Waiver Decision, slip op., at 5. In situations such as this proceeding, where the carrier is not the owner of the property and cannot agree to transfer the property, trail use (as well as public use) is inappropriate. Moreover, trail use here is inappropriate because such use would frustrate the purposes of the proposed abandonment. This is particularly true in this instance given that the right of way bisects the private property of the Church and its use would interfere with the development of its property.

Labor Protection

The Board should require GRWR to protect its employees pursuant to the conditions set forth in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 ICC 91 (1979), as it has in other adverse abandonment proceedings. *See, for example, Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, Ind.*, Docket No. AB 290 (Sub-No. 286), slip op at 7. However, since GRWR has not operated the Line Segment for over 20 years, and has not been maintaining the Line Segment, it is unlikely that any of GRWR's employees would be affected by abandonment and discontinuance.

Notice and Service

Applicant hereby certifies that it is has complied with the notice requirements of 49 CFR 1150.20 as follows:

(1) A Notice of Intent was originally filed with the Board on November 10, 2016. A copy of the original Notice of Intent is attached hereto as part of Exhibit C. Applicant later decided to defer the filing of this Application, and filed a second Notice of Intent with the Board

on March 16, 2017. A copy of the second Notice of Intent is also attached as part of Exhibit C.¹⁵ The Board waived the requirement that the Notice of Intent be sent to the Board by certified mail. *See* Waiver Decision at 3. The Notice of Intent was filed at least 15 days, and not more than 30 days, prior to the filing of this Application. 49 CFR §1152.20(b)(1).

(2) As shown by the certificate of service attached to each Notice of Intent, copies were sent as required by the Board's regulations and the Waiver Decision. *See* Exhibit C. *See* Waiver Decision, slip op. at 3-4 (waiving service on Amtrak and the headquarters of labor organizations).¹⁶

(3) Posting of the Notice of Intent was waived by the Waiver Decision. *See* Waiver Decision, slip op. at 4.

(4) The second Notice of Intent was published in *The Hartwell Sun* on March 16, 23 and 30, 2017. A copy of the proof of publication is attached hereto as Exhibit D. The Notice of Intent was fully published within the 30-day period prior to the filing of this application. 49 CFR §1152.20(b)(2).

(5) As noted above, an Environmental and Historic Report was filed with the Board on November 15, 2016, more than 20 days prior to the filing of this Application. 49 CFR §1152.20(c).

¹⁵ After the second Notice of Intent was filed and served, and had been published twice, the Railroad, in a blatant attempt to delay the filing of this application, filed a letter on March 29, 2017, claiming that the notice was defective because the endpoint stated in the Notice was allegedly incorrect and did not adequately set forth the scope of the proposed abandonment and discontinuance. Applicant responded by filing a letter on March 30, 2017, explaining why the description of the line segment was not misleading and why the notice was not defective.

¹⁶ The Waiver Decision, slip op. at 3-4, required the Railroad to identify any significant shippers, and Applicant to serve notice on such shippers. The only shipper identified by the railroads was Quality. Applicant has served Quality although as discussed above, Quality is not located on or served by the Line Segment.

Copies of the Application are being served as required by 49 CFR §1152.24 and the Waiver Decision, and as shown on the attached Certificate of Service. Since there are no stations on the Line Segment, a copy of the Application will not be posted. Copies will be available from counsel for the Applicant.

Discussion

Although GRWR has not been authorized by the ICC or the Board to own and operate the Hartwell Line, including the Line Segment, GRWR was authorized to operate under trackage rights. Trackage rights do not usually terminate without discontinuance authority; however, GRWR has not actually been operating under the trackage rights since the date it acquired the Hartwell Line in May 1990 (when the trackage rights would have merged with the ownership of the Line). It is not clear whether abandonment or discontinuance authority is required, and what standards should apply. Accordingly, Applicant broadly seeks authorization under 49 U.S.C. §10903 for the abandonment *and* discontinuance of all common carrier obligations of the Railroad related to the Line Segment.

Any person with a “proper interest” can bring an adverse abandonment application. *See Jacksonville Port Authority – Adverse Discontinuance – In Duval County, FL*, STB Docket No. AB-469 (served July 17, 1996) (“*Jacksonville Port Authority*”), slip op. at 5, *and cases cited therein*. Applicant, as the owner of the property underlying a portion of the Line Segment, is clearly a person with a proper interest and entitled to file this application. *Modern Handcraft, Inc. – Abandonment in Jackson County, MO*, 363 ICC 969, 971 (1981) (“*Modern Handcraft*”) (adjacent landowner with a legitimate claim under state law to a reversionary interest has a proper interest in securing abandonment authorization).

The Board has set forth the standards to be applied in an adverse abandonment proceeding:

Under 49 U.S.C. § 10903(d), the standard that applies to any application for authority to abandon a line of railroad is whether the present or future public convenience and necessity (PC&N) require or permit the proposed abandonment. In applying this standard in an adverse abandonment context, we consider whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests. As part of our PC&N analysis, we must consider whether the proposed abandonment would have a serious, adverse impact on rural and community development.

Stewartstown Railroad Company – Adverse Abandonment – In York County, PA, STB Docket No. AB 1071 (served November 14, 2012) (“*Stewartstown Railroad*”) (citations omitted), slip op. at 4. *See also Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, Ind.*, Docket No. AB 290 (Sub-No. 286) (served April 17, 2012) (“*St. Joseph*”), slip op at 3. In making the determination, the Board balances the competing benefits and burdens of the proposed abandonment on all interested parties, including the owner of the tracks, the shippers and the railroad, and on interstate commerce generally. *See New York Cross Harbor Railroad v. STB*, 374 F. 3d 1177, 1180-1181 (D.C. Cir. 2004). Further, in making its evaluation, the Board has explained:

Accordingly, we typically preserve and promote continued rail service where a carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic. On the other hand, we do not allow our jurisdiction to be used to shield a line from the legitimate processes of state law where no overriding federal interest exists. If we grant an adverse abandonment, our decision removes the shield of our jurisdiction, enabling the applicant to pursue other legal remedies to force the carrier off a line and sell or dispose of railroad property that would otherwise be protected as part of the national rail transportation system.

Stewartstown Railroad, *supra* at 4-5 (citations omitted). See also *Minnesota Commercial Railway Company – Adverse Discontinuance – In Ramsey County, MN*, STB Docket No. AB-882 (served July 16, 2008) (“*Minnesota Commercial*”), slip op. at 3.

This is a simple straightforward situation where common carrier service is no longer needed, and where Hartwell First, as an owner of property subject to the Line Segment, needs the abandonment/discontinuance authority granted so that it can proceed with its state court remedies to quiet title to its property. The Railroad has acknowledged that there are no service needs or requirements related to the Line Segment by leasing the right of way for a period of 99 years to a local group seeking to develop a park and farmers market at the end of the line. Moreover, the condition of the Line Segment has been allowed to deteriorate so that service is not even possible any more. Not only is the Line Segment overgrown, but road crossings have been closed, and in some cases removed.

Although the Railroad professes to want to use the Line Segment, it has not taken any substantial steps to make the Line Segment capable of handling rail service – indeed the only substantial step that it has sought to take was to start constructing a spur track on property of the Applicant which the Railroad has not right to use or occupy. That action was properly enjoined by the state court. No steps have been taken to rehabilitate the main line or to restore and/or reopen the crossings at Webb Street or at Jackson Street. And given the TORCH lease, it is not clear that the Railroad has any retained rights to rehabilitate or use the tracks for rail service. The Railroad’s only claimed “need” for the Line Segment is to use it as a run-around to facilitate its service to Quality, a customer located to the west of the Line Segment. However, there is no existing track in place that can be used for a run-around, with the former north spur segment having been removed by the Railroad in 2008, and the crossing at Webb Street having been

removed in 2009. Moreover, it is not clear that the Railroad has sufficient title or rights to be able to use the remaining track that previously might have been used a run-around – the Clinkscates industrial track is not owned by the railroad, and the agreement for its use can be terminated on 60 days' notice. Moreover, while there is a connecting track between the Clinkscates industrial track and the Line Segment, Applicant does not believe that the Railroad has any property rights for that connection.

Additionally, there is clearly no “need” for a run-around to serve Quality. Quality has been served efficiently and safely since at least 2008 without the Railroad using a run-around. The Railroad has been able to handle the expected increase in traffic, which only entails an additional four cars per year, without a run-around.¹⁷

Even if the Railroad were to want a run-around, there is no necessity to have the run-around adjacent to the Line Segment. As discussed above, the use of the Line Segment and adjacent tracks would require substantial rehabilitation of the main line track and the Clinkscates industrial track, construction of a new spur track across the property of Hartwell First (assuming the Railroad could acquire title to do so), obtaining authority for, and installing two crossings at Webb Street, reopening the crossings at Athens Street and Jackson Street, and breaking the lease with TORCH. Given the construction and other costs that would be required, if the Railroad doesn't want to make available an existing run-around track at Airline, it would clearly be no greater of a burden on the Railroad (and probably less of a burden) to identify a portion of its much wider 100 foot right of way between Quality and Leard Street (a street located to the east of Quality between Quality and Athens Street), or between the trestle west of Quality and

¹⁷ Quality may develop additional outbound business of 4-5 cars per year; however, that should not result in any additional car movements; rather as Applicant understands it some cars that now move outbound empty would move outbound as loads.

Bowersville,¹⁸ where a run-around could be constructed without the safety issues involved with reopening crossings or the adverse impacts on the proposed developments by Hartwell First and TORCH that will benefit the community.

There is no evidence that the public wants or needs the Railroad to provide common carrier service to or over the Line Segment; indeed the only party seeking protection from the Board is the Railroad. There has been no local service for over 20 years, and no use for almost 10 years. No shippers would lose any service, or have their service adversely affected as a result of the abandonment and discontinuance.¹⁹ Thus, there will be no adverse effect on interstate commerce or on shippers,²⁰ and there is no public interest in allowing GRWR to resume providing service where none is needed or wanted. Abandonment and discontinuance would allow TORCH to pursue its community development and allow Hartwell First to develop its property. *See Modern Handcraft*, 363 ICC at 971-972 (no traffic for over 12 years: line physically inoperable: carrier made no serious effort to solicit traffic on the line). *See also St. Joseph*, supra, slip op. at 4-5 (no service for over 20 years, no need or potential for renewed rail operations, abandonment will foster community development by the City and allow the adjacent property owners to develop and use their property as they see fit). There is no reason that the Line Segment needs to remain as part of the national railroad system.

Applicant is not requesting that the Board make any determinations about who has proper title to the property underlying the Line Segment once abandonment and discontinuance

¹⁸ The Railroad may not be fully aware of the scope of its right of way in these areas.

¹⁹ Grant of the abandonment authority would also allow the Railroad to use its rail resources elsewhere where it continues to operate.

²⁰ As such, there will be no adverse impact on rural or community development.

authority has been granted. That will be determined by the Georgia state courts.²¹ Rather, Applicant is requesting that the Board remove the jurisdictional shield that the Railroad is now using to prevent the rights of the Applicant from being determined by the state courts. The Board has been clear that it will not allow its jurisdiction to be used in such a manner. *See Stewartstown Railroad, supra* at 12. *See also Minnesota Commercial, supra; Jacksonville Port Authority, supra* at 6. And the Board should not allow its jurisdiction to be used in such a manner here.

Conclusion

For the reasons set forth above, the Board should find that Applicant's proposed abandonment and discontinuance of the Line Segment satisfies the requirements of 49 C.F.R. §1152, and should issue a decision granting the adverse abandonment and discontinuance authority requested.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500

Attorneys for
Hartwell First United Methodist Church

Dated: April 14, 2017

²¹ Applicant does not contest the Railroad's ownership of the tracks comprising the Line Segment, and the Railroad would be given a reasonable period to remove its tracks and materials and restore the property (subject to the resolution of the issues raised by the SHPO in response to the EHR).

VERIFICATION

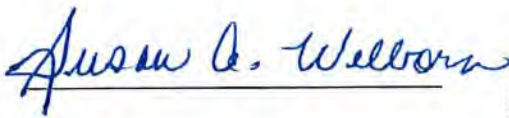
State of Georgia :
: ss.
County of Hart :

Joe M. Whittemore, makes oath and says that he is Chair, Charge Conference Task Force of Hartwell First United Methodist Church, the applicant herein; that he has been authorized by the applicant to verify and file with the Surface Transportation Board the foregoing Application in STB Docket No. AB 1242; that he has carefully examined all of the statements in the Application as well as the exhibits attached thereto and made a part thereof; that he has knowledge of the facts and matters relied upon in the Application; and that all representations set forth therein are true and correct to the best of her/his knowledge, information and belief.



Joe M. Whittemore

Subscribed and sworn to before me, a notary in and for the State and County above named, this
14 day of April, 2017.



Susan A. Welborn



My commission expires:

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2017, I served a copy of the foregoing
Application for Adverse Abandonment on the persons listed below by the method shown:

By email and U.S. mail, postage prepaid:

Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, DC 20016
rhstreeter@gmail.com

By U.S. mail, postage prepaid:

Governor Nathan Deal
Office of the Governor
State of Georgia
206 Washington Street
111 State Capitol
Atlanta, Georgia 30334

Quality Holdings LLC
300 Fisher Drive
Hartwell, GA. 30643

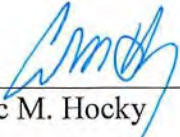
Georgia Department of Transportation
One Georgia Center
600 W. Peachtree, NW
Atlanta, GA 30308

Georgia Department of Transportation
District One
Brent Cook, District Engineer
2505 Athens Highway, SE
Gainesville, GA 30507

UGA Cooperative Extension – Hart County
200 Arthur Street
Hartwell, GA 30643

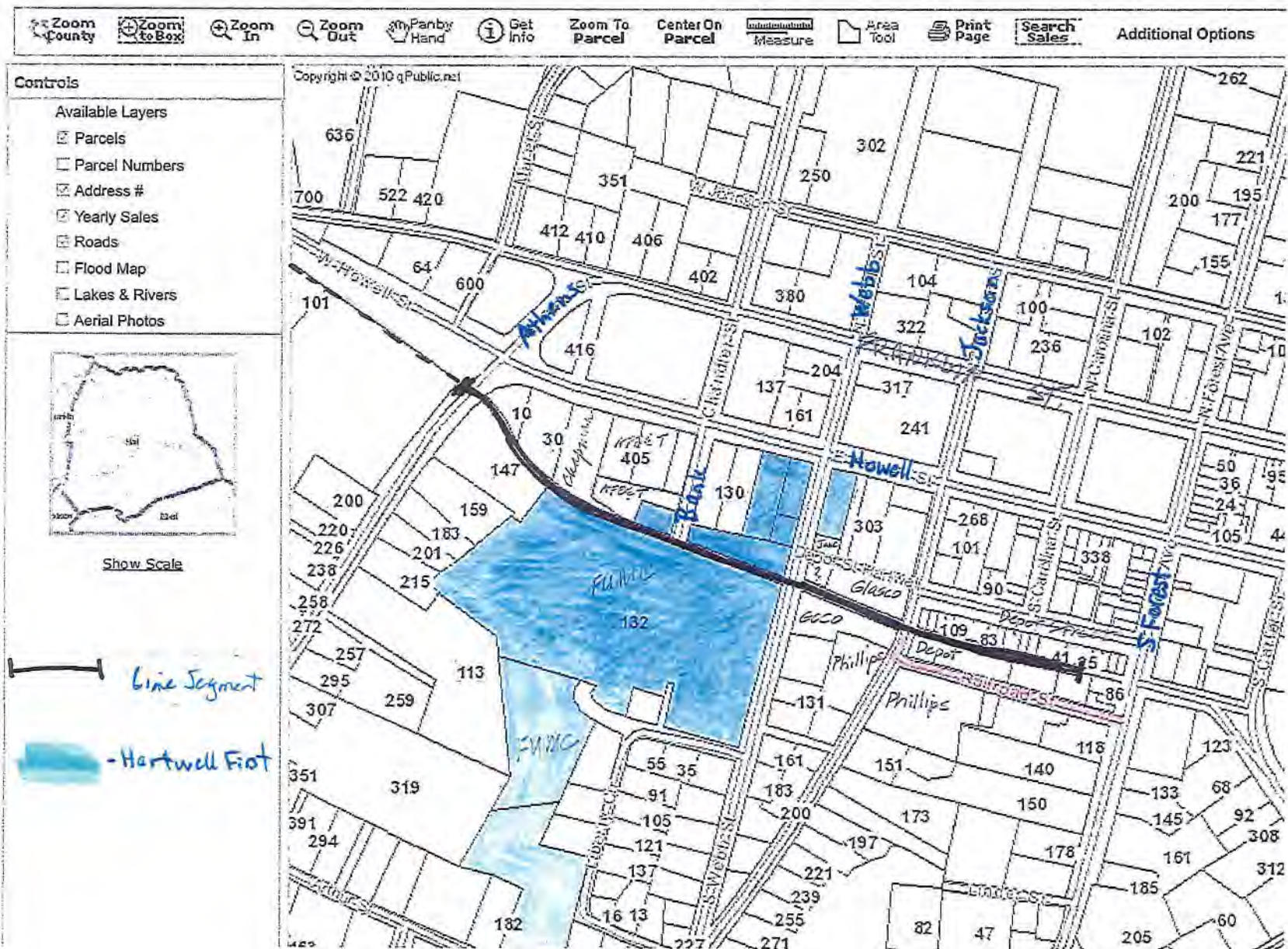
US Department of Transportation
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Headquarters
Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357



Eric M. Hocky

EXHIBIT A



THE GREAT WALTON RAILROAD, INC.

The Athens Line, LLC
Hartwell Railroad Company



Great Walton Line

The Athens Line

Hartwell Line

Gallery

Map Overview

Inventory

Economic Development

Contact Us

Map Overview

To zoom in on our railroad territories use your mouse to scroll over Social Circle, Athens and Hartwell areas of the map.

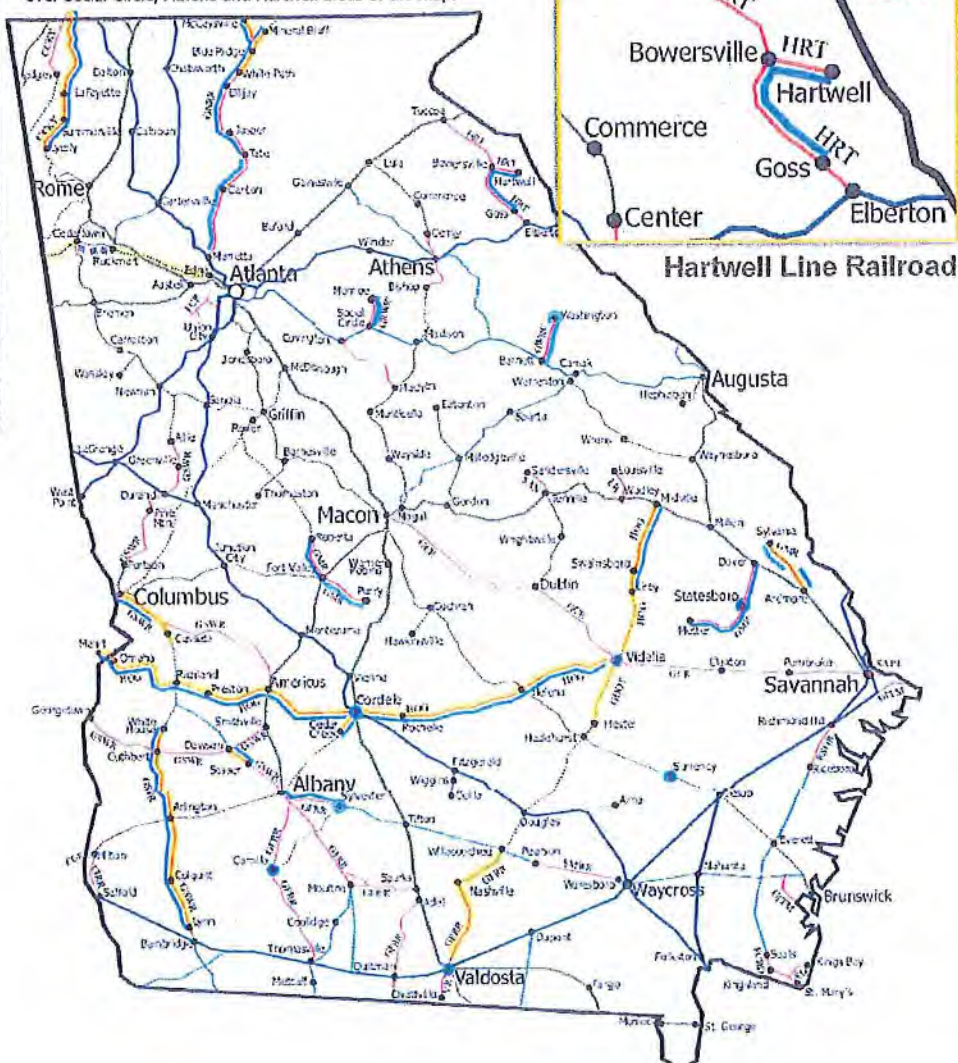


EXHIBIT B

[Additions/changes to the form of notice approved by the Waiver Decision, other than the correction of typographical errors are marked by underlining.]

STB Docket No. AB 1242

Notice of Application for Adverse Abandonment

On April 14, 2017, Hartwell First United Methodist Church ("Applicant") filed with the Surface Transportation Board, Washington, D.C. 20423, an application seeking the adverse abandonment and discontinuance (collectively, "abandonment") of the approximately 0.25 miles of railroad tracks between Athens Street (unknown milepost) and the end of the line at South Forest Avenue (approximately milepost 10.5) in Hartwell, Georgia (the "Line") currently owned by either Hartwell Railroad Company ("HRT") or The Great Walton Railroad Company ("GRWR") (collectively, "railroad"). The Line traverses through United States Postal Service ZIP Code 30643, in Hart County, Georgia.

The Line does not contain federally granted rights-of-way. Any documentation in the Applicant's possession will be made available promptly to those requesting it. The Applicant's entire case for adverse abandonment was filed with the application.

The interest of railroad employees will be protected by Oregon Short Line Railroad Co.--Abandonment--Goshen, 360 ICC 91 (1979).

Any interested person may file with the Surface Transportation Board written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), within 45 days after the application is filed. Based on waivers and exemptions granted by the Surface Transportation Board, this proposed abandonment will not be subject to a request for a public use condition under 49 U.S.C. 10905 (§1152.28 of the Board's rules). The Surface Transportation Board did not rule on whether a request for a trail use condition under 16 U.S.C. 1247(d) (§1152.29 of the Board's rules) will be permitted; however, if permitted, a request must be filed within 45 days from the date of filing of the application. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding recommended provisions for protection of the interests of employees.

Parties seeking information concerning the filing of protests should refer to §1152.25.

Written comments and protests should indicate the proceeding designation STB Docket No. AB 1242 and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, no later than

May 29, 2017 (45 days after the date applicant filed its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the Applicant: Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Philadelphia, PA 19103; 215-640-8500. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR §1104.12(a).

In this adverse abandonment, the line sought to be abandoned will not be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

Applicant shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

EXHIBIT C

CLARK HILL

Eric M. Hocky
T 215.640.8523
F 215.640.8501
Email: ehocky@clarkhill.com

Clark Hill PLC
One Commerce Square
2005 Market Street
Suite 1000
Philadelphia, PA 19103
T 215.640.8500
F 215.640.8501
clarkhill.com

November 10, 2016

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

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

Dear Ms. Brown:

Pursuant to 49 CFR 1152.20(a)(1), enclosed is a copy of the Notice of Intent of Hartwell First United Methodist Church ("Applicant") to file an adverse abandonment application in the above-referenced proceeding. The Notice of Intent is consistent with the form required under 49 CFR 1152.21, and the waivers granted by the Board in its decision served August 29, 2016 (the "Waiver Decision").

As required under 49 CFR 1152(a)(2), Applicant is serving a copy of this letter, and the enclosed Notice of Intent, on the parties shown on the attached service list.

The requirement under 49 CFR 1152(a)(3) to post the Notice of Intent was waived in the Waiver Decision.

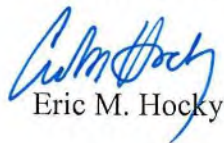
A copy of the Notice of Intent is scheduled to be published in *The Hartwell Sun* on November 10, November 17, and November 24, 2016, as required by 49 CFR 1152(a)(4). Proof of publication will be included as part of the Environmental and Historic Report that will be filed by the Applicant.

November 10, 2016
Page 2

Please let me know if there are any questions regarding this filing.

Respectfully,

CLARK HILL PLC



Eric M. Hocky

EMH/e
Encl.

cc: All Persons Shown on Attached List (w/encl.)

November 10, 2016

Page 3

Service List for Notice of Intent:

Via certified mail:

Governor Nathan Deal
Office of the Governor
State of Georgia
206 Washington Street
111 State Capitol
Atlanta, Georgia 30334

Via U.S. first class mail, postage prepaid:

Quality Holdings LLC
300 Fisher Drive
Hartwell, GA. 30643

Georgia Department of Transportation
One Georgia Center
600 W. Peachtree, NW
Atlanta, GA 30308

Georgia Department of Transportation
District One
Brent Cook, District Engineer
2505 Athens Highway, SE
Gainesville, GA 30507

UGA Cooperative Extension – Hart County
200 Arthur Street
Hartwell, GA 30643

US Department of Transportation
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Headquarters
Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357

November 10, 2016

Page 4

Conservation and Outdoor Recreation Programs
National Park Service
1849 C. Street, NW
Org. Code 2220
Washington, DC 20240

U.S. Railroad Retirement Board
844 North Rush Street
Chicago IL, 60611-2092

Tom Tidwell, Chief
U.S. Forest Service
1400 Independence Ave., SW
Washington, DC 20250-0003

Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, DC 20016

Notice of Intent To File Adverse Abandonment and Discontinuance

Hartwell First United Methodist Church ("Applicant") gives notice that on or about December 9, 2016, it intends to file with the Surface Transportation Board ("STB"), Washington, DC 20423, an application seeking the adverse abandonment and discontinuance (collectively, "abandonment") of the approximately 0.25 miles of railroad tracks between Athens Street (unknown milepost) and South Forest Avenue (milepost 10.5) in Hartwell, Georgia (the "Line") currently owned by Hartwell Railroad Company ("HRT"), and over which The Great Walton Railroad Company ("GRWR") has trackage rights. The Line traverses through United States Postal Service ZIP Code 30643, in Hart County, Georgia. There are no stations associated with the Line. Applicant claims that the Line has not been used to provide rail service for over 20 years, and that there are no prospects for future service. Applicant, as the owner of property on either side of the right of way wants quiet title to the portion of the right of way that bisects its property. HRT and GRWR have refused to seek abandonment and discontinuance on their own. Applicant is seeking adverse abandonment authority so that the STB's jurisdiction will be removed, and Applicant can proceed with its quiet title action under Georgia state law. Based on information in Applicant's possession, the Line does not contain federally granted rights-of-way. Any documentation in the Applicant's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by Oregon Short Line Railroad Co.--Abandonment--Goshen, 360 ICC 91 (1979). The application will include the Applicant's entire case for adverse abandonment and discontinuance. Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board written comments concerning the proposed adverse abandonment, or protests to it. These filings are due 45 days from the date of filing of the application. Based on waivers and exemptions granted by the Surface Transportation Board, this proposed abandonment will not be subject to a request for a public use condition under 49 U.S.C. 10905 (§1152.28 of the Board's rules), or a request for a trail use condition under 16 U.S.C. 1247(d) (§1152.29 of the Board's rules). The Surface Transportation Board did not rule on whether a request for a trail use condition under 16 U.S.C. 1247(d) (§1152.29 of the Board's rules) will be permitted; however, if permitted, a request must be filed within 45 days from the date of filing of the application. Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following:

- (1) Protestant's name, address and business.
- (2) A statement describing protestant's interest in the proceeding including:
 - (i) A description of protestant's use of the Line;
 - (ii) If protestant does not use the line, information concerning the group or public interest it represents; and

- (iii) If protestant's interest is limited to the retention of service over a portion of the Line, a description of the portion of the Line subject to protestant's interest (with any designations as may be available) and evidence showing that the applicant can operate the portion of the Line profitably, including an appropriate return on its investment for those operations.
- (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)].
- (4) Any rebuttal of material submitted by Applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

- (i) Environmental impact.
- (ii) Impact on rural and community development.
- (iii) Recommended provisions for protection of the interests of employees.
- (iv) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and §1152.29.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to §1152.25.

Written comments and protests, including all requests for trail use conditions, should indicate the proceeding designation STB Docket No. AB 1242, and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, no later than January 23, 2017 (or 45 days after the date Applicant files its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the Applicant: Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Philadelphia, PA 19103; 215-640-8500. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in 49 CFR Part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR §1104.12(a).

CLARK HILL

Eric M. Hocky
T 215.640.8523
F 215.640.8501
Email: ehocky@clarkhill.com

Clark Hill PLC
One Commerce Square
2005 Market Street
Suite 1000
Philadelphia, PA 19103
T 215.640.8500
F 215.640.8501
clarkhill.com

March 30, 2017

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

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

Dear Ms. Brown:

This letter responds to the letter submitted on March 29, 2017, on behalf of Hartwell Railroad Company ("HRC") and The Great Walton Railroad Company, Inc. ("GWRC"), claiming that the Notice of Intent filed with the Board on March 16, 2017, by Hartwell First United Methodist Church ("Church") is defective because it allegedly misstates the ending milepost of the line in Hartwell, Georgia.

Initially, it should be noted that the Church's Petition for Waivers filed with the Board on May 26, 2016, made clear that the line that will be the subject of the adverse abandonment application is the line from Athens Street to the end of the line at South Forest Avenue in Hartwell, GA. The Petition included a draft of the notice of intent. The response of HRC and WRC filed on June 15, 2016, did not raise any issue with the description of the line in the notice of intent. The form of notice of intent was approved by the Board in its decision served August 29, 2016 (the "Waiver Decision").

The Church, of course, is not the railroad, and does not have access to the railroad's maps or milepost designations. However, the Church based its description of the end point of the line

March 30, 2017

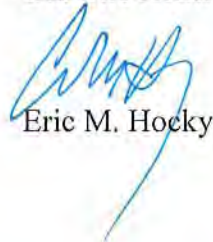
Page 2

on the *Federal Register* notice published April 6, 1990, in connection with a trackage rights notice filed by GWRC with the Interstate Commerce Commission. See *Great Walton Railroad Co., d/b/a Hartwell Railroad Co. – Trackage Rights Exemption – Hartwell Railway Co.; Exemption*, 55 FR 12958 (describing the trackage rights line as being “between milepost 0.0, at Bowersville, GA, and milepost 10.5, at Hartwell, GA”). A copy of the *Federal Register* notice is attached hereto for ease of reference. Thus, if milepost 10.5 does not exist, as the railroads now maintain, then the GWRC trackage rights notice misrepresented the description of the line. And if the misrepresentation/misdescription is material as now alleged by HRC and GWRC, then the trackage rights exemption should be revoked and voided *ab initio*. See 49 USC 10502(d) [formerly 10505(d)]; 49 CFR 1180.4(g)(1)(ii).

The Church maintains that the line that is the subject of the proposed adverse abandonment and discontinuance has not been used for providing rail service for over 20 years, and that the present or future public convenience and necessity require abandonment and discontinuance. The Church will not address the other “facts” included in the HRC / GWRC letter, some of which are misleading, and some of which are false. To the extent relevant to the adverse abandonment that will be requested, they will be addressed in the application to be filed by the Church.

Respectfully,

CLARK HILL PLC



Eric M. Hocky

EMH/e
Encl.

cc: All Persons Shown on Attached List (w/encl.)

Service List for Notice of Intent:

Governor Nathan Deal
Office of the Governor
State of Georgia
206 Washington Street
111 State Capitol
Atlanta, Georgia 30334

Quality Holdings LLC
300 Fisher Drive
Hartwell, GA. 30643

Georgia Department of Transportation
One Georgia Center
600 W. Peachtree, NW
Atlanta, GA 30308

Georgia Department of Transportation
District One
Brent Cook, District Engineer
2505 Athens Highway, SE
Gainesville, GA 30507

UGA Cooperative Extension – Hart County
200 Arthur Street
Hartwell, GA 30643

US Department of Transportation
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Headquarters
Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357

Conservation and Outdoor Recreation Programs
National Park Service
1849 C. Street, NW
Org. Code 2220
Washington, DC 20240

U.S. Railroad Retirement Board
844 North Rush Street
Chicago IL, 60611-2092

Tom Tidwell, Chief
U.S. Forest Service
1400 Independence Ave., SW
Washington, DC 20250-0003

Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, DC 20016
(also served by email)

EXHIBIT D

The Hartwell Sun

8 Benson Street • P.O. Box 700 • Hartwell, GA 30643

The Hartwell Sun
PO Box 700
Hartwell, GA 30643
Phone: 706-376-8025
Fax: 706-376-3016
Email: mfrankum@thehartwellsun.com

AFFIDAVIT OF PUBLICATION

Legal Reference: NOTICE OF INTENT TO FILE
ABANDONMENT

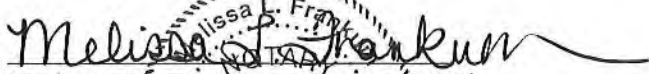
STATE OF GEORGIA
COUNTY OF HART

Personally appeared before the undersigned notary public in and for said state, Peggy Vickery, who having been duly sworn on oath that she is the publisher of The Hartwell Sun, the legal organ for Hart County, confirms that the attached legal advertisement was published in the Hartwell Sun on the following date(s):

03/16/2017 03/23/2017 03/30/2017


Affiant

Sworn to and subscribed before me this 30th day of March, 2017


Melissa L. Frankum, Notary Public
PUBLIC
3-31-17
My commission expires March 31, 2017
HART COUNTY, GA

Tax Sales

THIS tract is bounded now or formerly on the Northwest by Cherokee Creek, on the Northeast by Tract 3; the Southeast by property of the United States of America; and on the Southwest by lot of W. Richard Ashmore, and is described as to acres and distances in the following manner:

ALSO, All that tract of land located in the 1117th District, G.M. Hart County, Georgia, containing 4.20 acres, more or less, and being designated as TRACT 4 on a plat made by A. Bria, Registered Land Surveyor, and December 17, 1965, and noted in Plat Book 2-C, at Page 100 of the Official Record.

SAID tract together with the adjacent lands owned by the United States is hereby incorporated herein in aid of this description. This tract of land is bounded now, and was at the time of the original survey, on the North by the United States; on the Southwest by the City of the United States of America; on the East by Highway No. 1, and on the West by the Highway No. 1, on the Northwest by Cherokee Creek and the "Red Lot and Escarpment" as shown on the above described plat.

ALSO, All that tract or parcels of land lying and being in the 1117th District, of the County of Garfield, containing 100 acres, more or less, and bounded on the Northwest by the same, now or formerly known as the "Red Lot and Escarpment" of the United States of America, on the Northwest and Southwest by lands of the United States of America, on the East by the "Red Lot and Escarpment" of the United States of America, on the South by the "Red Lot and Escarpment" of the United States of America, on the South by Cherokee Creek.

ALL RIGHTS RESERVED FROM AND NOT INCLUDED IN THIS DESCRIPTION.

ALSO AND CONVEYANCE the substitution of road and old-de-se, the 0.11 acre parcel currently owned by Robert W. Wingo, and 0.22 acre parcel more or less, owned by Robert W. Wingo, and 0.22 acre parcel more or less, owned by Robert W. Wingo. These exceptions are shown on the plat hereinafter described.

This property is identified as PLAT 1, a plat made by A.M. Brill, Registered Land Surveyor, and recorded in Book 2-C, at Page 279, Ch. 15, Hart County, Georgia, which plat together with the recordation of the same, and the recordation of the same, are in and of this description.

ALSO, As the tract of land located in the County of Hart, State of Georgia, containing 4.66 acres, or less, and being bounded on the Northwest by Cherokee Creek; on the South by the line of the Georgia-Cherokee and on the Northeast by Lot Nos. 359, 340, 341 and of Section Two of Tract No. 10, County of Hart, State of Georgia.

This tract of land is identified as PLAT 2, a plat dated December

ALSO, All that tract or parcel of land known as being in the 11170's District, A.M. Britt, Georgia, containing 0.624 of an acre, more or less, and bounded substantially in the following manner: On the North by the 11170's District; On the East by the 11170's District; On the South by the 11170's District; On the Southwest by Tract 3 known as the Dossier Lot, the northeast by property of the 11170's District, and the Southeast by Tract 3 as shown on the following described plat.

This property is more fully shown as being in the 11170's District December 17, 1965, made by A.M. Britt, registered Land Surveyor, recorded in Plin Book 2-2 at Page 273, Chicks County, Georgia, which said plat together with the survey thereon is hereby incorporated herein in full and by reference incorporated herein in said plat description. This lot is identified

It is in (under)land and agreed that the
A. Moore" shall be used only for residential
purpose, only, and shall not be
used for any other purpose. In
1000 square feet of heated floor
space area, there shall be no concrete
flooring; there shall be no concrete
steps, no concrete walls, no concrete
etc. there shall not be any mobile
homes of any description; no livestock
kept; no outdoor toilets and no
bathrooms or parts thereof into the
open.

ALSO, conveyed herein is a partial
assignment to one Charlotte
M. Moore, the right to use the premises
for the purpose of ingress and egress
in the above described properties
the county Road.

The above facts are the same
property described in a Warranty Deed
in Harbor Light Marine, Inc. To
Atlantic Enterprises, Inc. Dated Dec
1974, and recorded in the Public
Records, Vol. 173, at Page 265, Han County,
Georgia. Records, and said Deed and
assignment, thereof are by reference
made to the herein and made
a part of this description.

STAY DRUG FREE

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to

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Country's Veterans

**Thanks
to
Our**

Country's Veterans

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**

APPLICATION FOR ADVERSE ABANDONMENT

VOLUME II A

APPENDICES

(Includes Color Copies)

Eric M. Hocky
CLARK HILL THORP REED
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103-7041
(215) 640-8500
ehocky@clarkhill.com

Attorneys for
Hartwell First United Methodist Church

Dated: April 14, 2017

APPENDICES

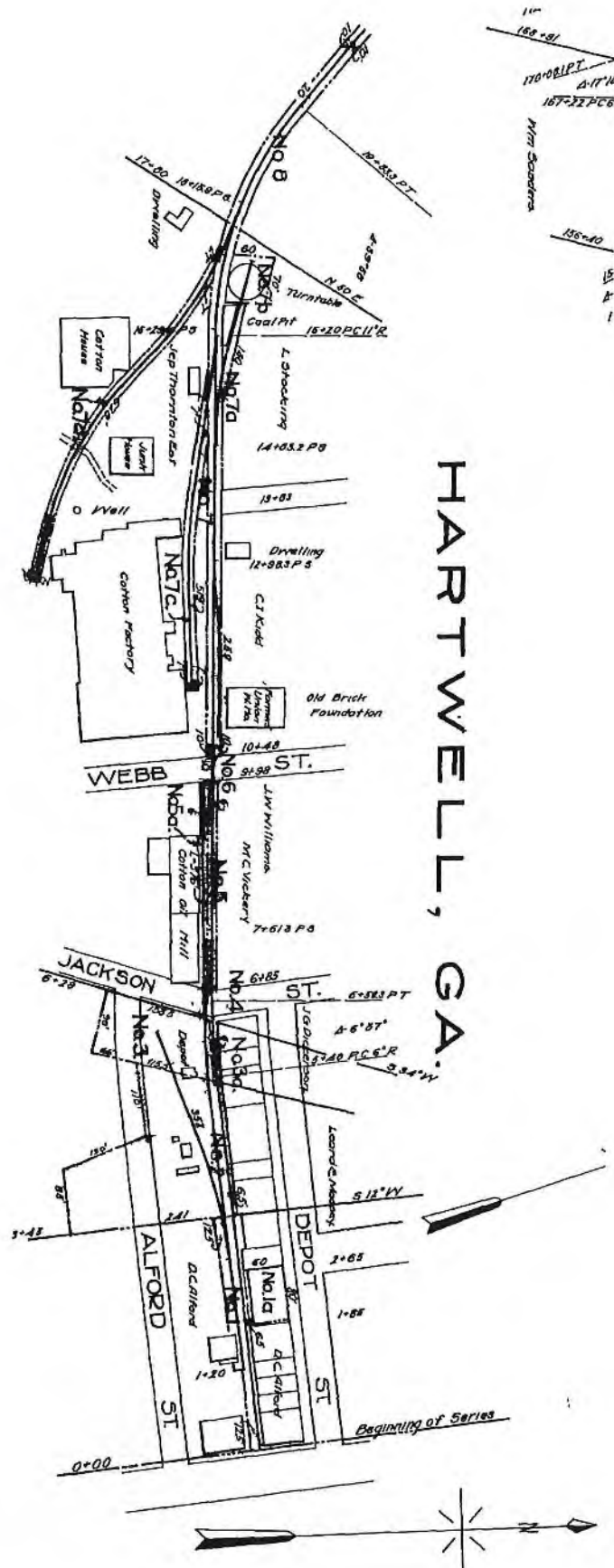
Volume II A

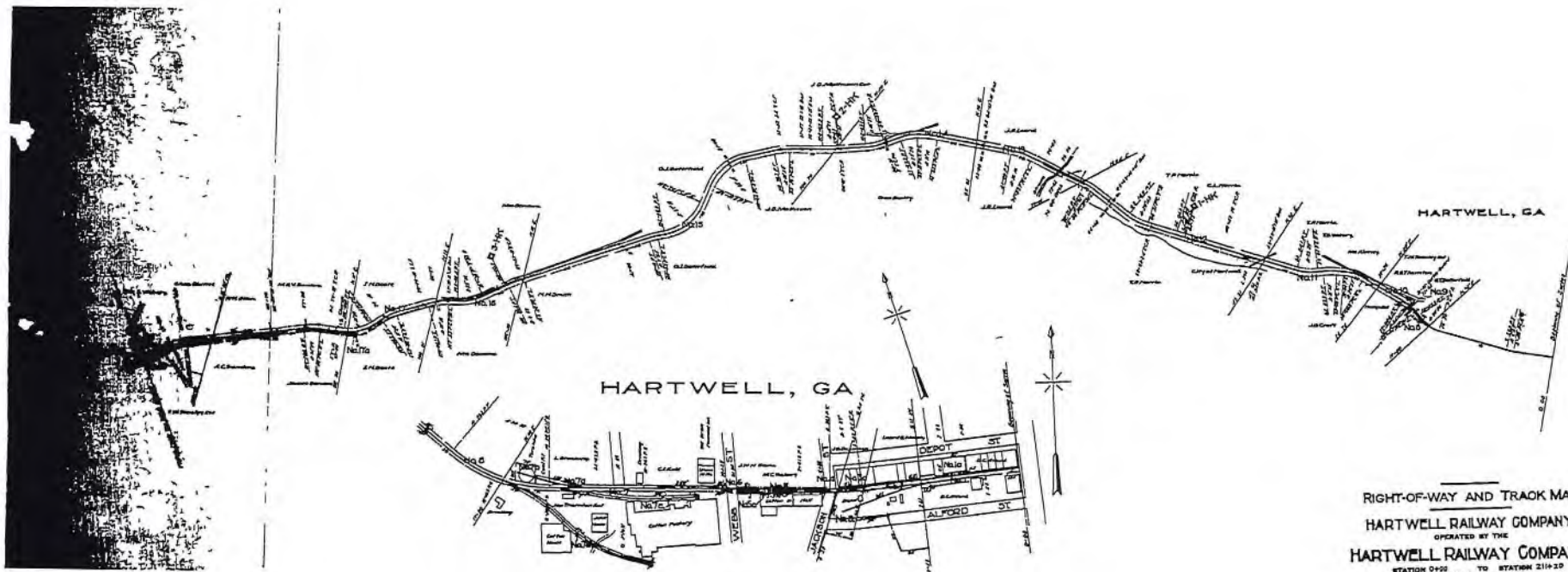
1. Valuation Maps
2. Clinkscales Agreement
3. GRWR Trackage Rights – Federal Register Notice
4. GRWR Trackage Rights Notice of Exemption Documents
5. [Intentionally omitted.]
6. HRT / GRWR Webpages
7. HRT – Corporate Information
8. February 9, 2017 Hearing Transcript Excerpts
9. HRT letter to GaDOT re: crossing removal

Volume II B

10. Photographs of Line Segment
11. TORCH Lease
12. Aerial photographs of Hartwell First property
13. HRT letter to Hartwell First re rehabilitation
14. Hartwell First letter to HRT re rehabilitation
15. Emergency Injunction Order

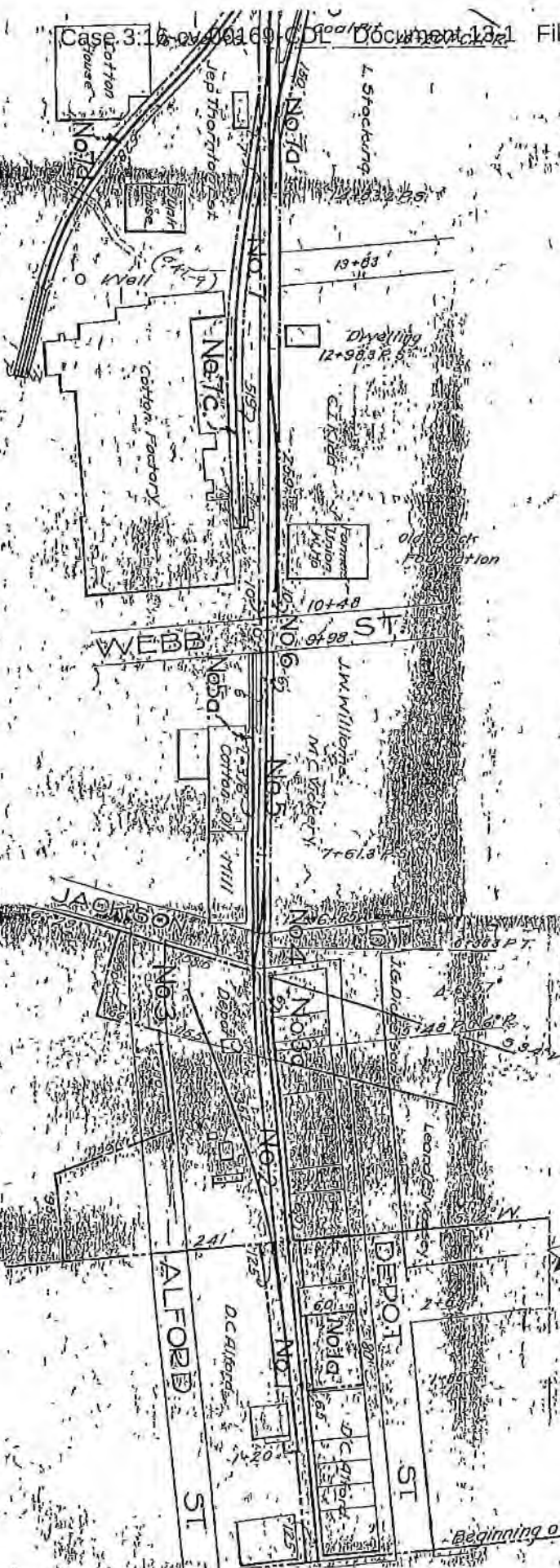
1





RIGHT-OF-WAY AND TRACK MAP
 HARTWELL RAILWAY COMPANY
 OPERATED BY THE
 HARTWELL RAILWAY COMPANY
 STATION 0+00 TO STATION 21+00
 MADE IN 1977

HARTWELL, GA



RIGHT-OF-WAY AND TRACK MAP

HARTWELL RAILWAY COMPANY

OPERATED BY THE

HARTWELL RAILWAY COMPANY

STATION 0+00 TO STATION 2+20

SCALE 1 IN = 400 FT JUNE 30TH 1916

OFFICE OF SPECIAL ENGINEER

WASHINGTON, D.C.



2

Small RevDoc

Washington, D. C., August 22, 1922.
1922-2.

Agreement June 28, 1919, between Director General of Railroads
and H. P. Clinkscales, industrial brick, Hartwell, Ga., which
expired at end of Federal control.

Wesley A. Abernethy
Furness
Adams
Ballard (W)
Sutt
Duggan
Horse
Jones (JB)

Continued in force by agreement dated August 5, 1922,
between the Railway Company and H. P. Clinkscales, under same terms
and conditions.

G. K. H.

*Revised
Agreement*

AN AGREEMENT, made and entered into this 26th day of June, 1919, by and between
 DIRECTOR GENERAL OF RAILROADS, by E. M. Coarman, Federal Manager,
 Hartwell Railroad, hereinafter for convenience styled the Railroad, party
 of the first part, and
 R. P. CHLIMSKO, of Hartwell, in the State of Georgia, party of the
 second part;

WITNESSETH:

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 355 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 4175 feet
 east of Milepost 1, and extends and with the said proposed 355 foot exten-
 sion, thereof, will extend thence in an easterly direction for a distance of
 514 feet, more or less; and will thereafter, during the life of this agree-
 ment, 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, 1918, 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

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. Coapman 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

PPC

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:

[Signature]
As to Railroad.

DIRECTOR GENERAL OF RAILROADS,
By

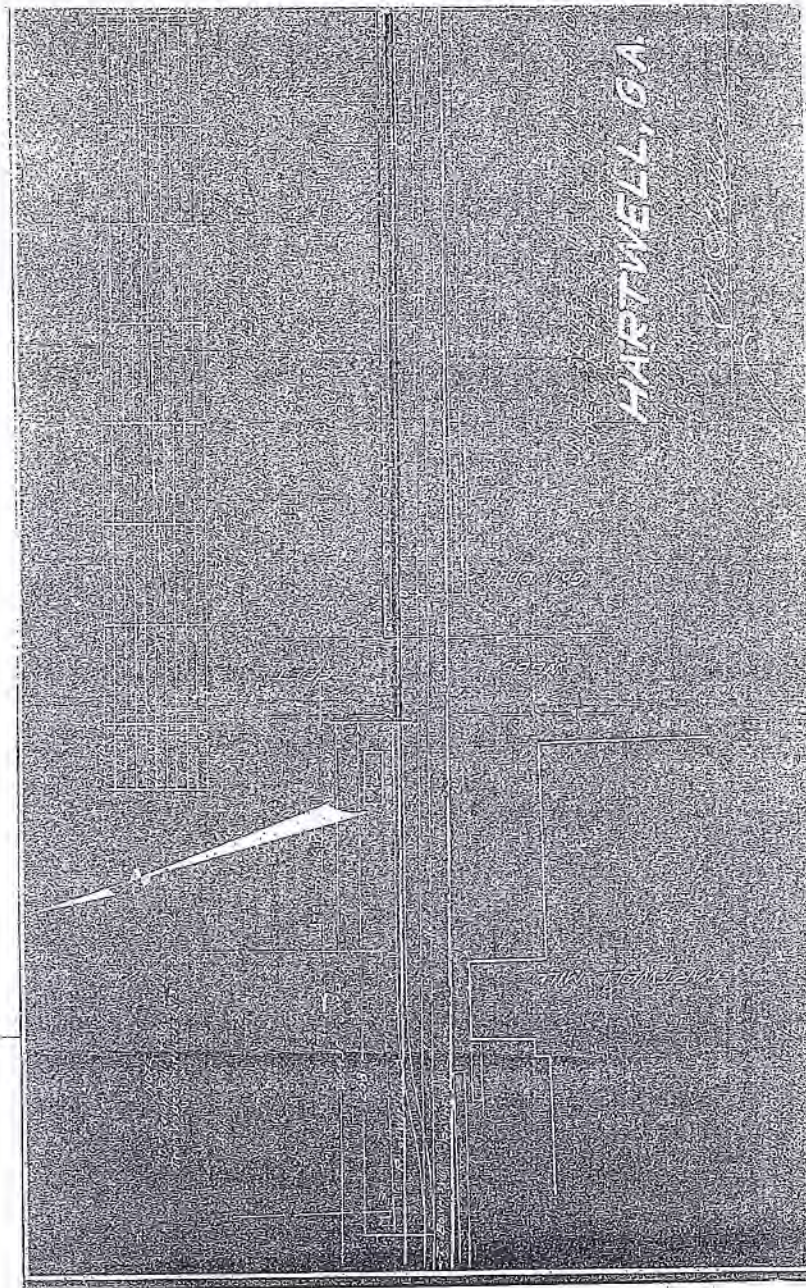
[Signature]
Federal Manager, Hartwell Railroad.

In presence of:

[Signature]
As to party of second part.

[Signature]

6-21-19-L.sb
15014



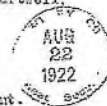
Washington, D. C., August 22nd, 1922
15014

IN RE: Memorandum of agreement between Hartwell Railway Company and
R. P. Clinkscales, dated August 5th, 1922, continuing in
effect from and after March 1st, 1920, agreement between them
dated June 26th, 1919, covering industrial track, Hartwell,
Ga., 'terminable 60 days' notice.

Mr. Mauldin:

I send you herewith the original memorandum agreement.

P. H.



Mauldin
sent

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. CLENKSCALES, 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, 1918, 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 affect 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 July, 1922.

In presence of:

J. B. Brown
W. L. Stays
 As to Railway Company.

HARTWELL RAILWAY COMPANY,
 By

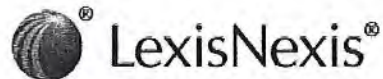
W. L. Stays
 Vice-President.

In presence of:

W. L. Stays
H. H. Conally
 As to Industry.

R. P. Clenkscales

3



5 of 5 DOCUMENTS

FEDERAL REGISTER

[Finance Docket No. 31626]

55 FR 12958

April 6, 1990

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

TEXT: 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. Molm, 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 4-6-90; 8:45 am]

BILLING CODE 7035-01-M

4

Hocky, Eric M.

From: Bourdon, Katherine <Katherine.Bourdon@stb.gov>
Sent: Thursday, February 16, 2017 11:30 AM
To: Hocky, Eric M.
Subject: FW: request for records
Attachments: FD 31626.pdf

Eric,

Here are the documents we have on the microfiche in our library for FD 31626.

Thank you.

Katherine Bourdon
Attorney Advisor
Office of Public Assistance, Governmental Affairs & Compliance
U.S. Surface Transportation Board
202-245-0285
Katherine.Bourdon@stb.gov

From: Rail Customer and Public Assistance
Sent: Monday, February 13, 2017 4:53 PM
To: Bourdon, Katherine <Katherine.Bourdon@stb.gov>
Subject: FW: request for records

From: Hocky, Eric M. [<mailto:ehocky@clarkhill.com>]
Sent: Monday, February 13, 2017 4:32 PM
To: Rail Customer and Public Assistance <RCPA@stb.gov>
Subject: request for records

I would like to obtain a copy of the trackage rights notice of exemption filed by The Great Walton Railroad Company in ICC Finance Docket No. 31626. I believe that the filing would have been made in March 1990.

Please let me know if you need anything additional to handle this request.

Thank you for your assistance.

Eric M. Hocky

CLARK HILL PLC

One Commerce Square | 2005 Market Street, Suite 1000 | Philadelphia, PA 19103
Direct Dial: 215.640.8523 | Fax: 215.640.8501
ehocky@clarkhill.com | www.clarkhill.com

Arizona • Delaware • Illinois • Michigan • New Jersey •
Pennsylvania • Washington DC • West Virginia

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JOHN R. MOLE

TROUTMAN, SANDERS, LOCKERMAN & ASHMORE

a limited liability professional corporation
ATTORNEYS AT LAW
CANDLER BUILDING, SUITE 1400
117 PEACHTREE STREET, N.E.
ATLANTA, GEORGIA 30309-1800
404/558-8000
FAX: 404/558-8000
TELETYPE: 404/558-8000

WRITER'S DIRECT DIAL NUMBER
404-558-8100

March 16, 1990



Ms. Moreta 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 - Finance Docket No. 31626

Dear Ms. McGee:

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

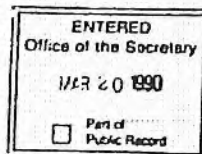
Thank you for your attention to this matter. A hard copy of this letter will be delivered on Monday.

Very truly yours,

John R. Mole
John R. Mole

JRM:jm

cc: Marion Guyton



0-073F056

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.

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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 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

TROUTMAN, SANDERS, LOCKERMAN
& ASHMORE
1400 Candler Building
127 Peachtree St., N.E.
Atlanta, Georgia 30303-1810
(404) 658-8107

1
TROUTMAN, SANDERS, LOCKERMAN & ASHMORE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

CANDLER BUILDING, SUITE 1400

187 PEACHTREE STREET, N.E.

ATLANTA, GEORGIA 30303-1810

404/558 8000

CABLE: MAASTMO

TELECOM: 404-721-8488

WRITER'S DIRECT DIAL NUMBER

404-558-8107

JOHN R. HOLM

March 13, 1990

Ms. Norota 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. Holm
John R. Holm

JRH:jm

Enclosures

INTERSTATE COMMERCE COMMISSION

Notice of Exemption

Finance Docket No. 31626

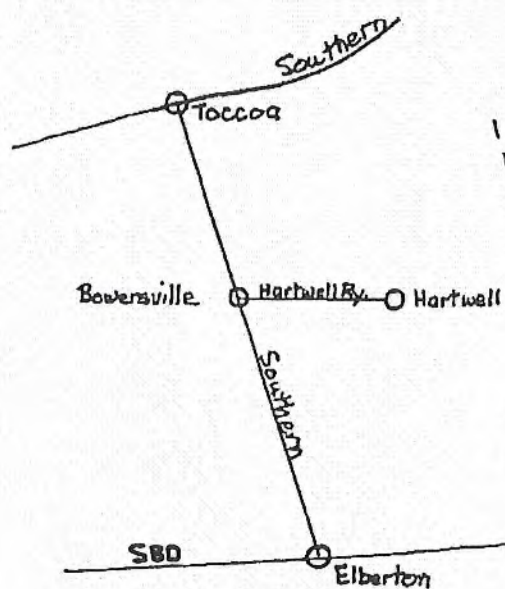
Great Walton Railroad Company d/b/a
Hartwell Railroad Company --
Trackage Rights --
Hartwell Railway Company

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.



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ASSETS PURCHASE AGREEMENT

THIS ASSETS PURCHASE AGREEMENT (the "Agreement") is made and entered into this _____ day of March, 1990, by and between HARTWELL RAILWAY COMPANY, a Georgia railroad corporation (the "Seller"), and THE GREAT WALTON RAILROAD COMPANY, a Georgia railroad corporation (the "Purchaser").

W I T N E S S E T H:

WHEREAS, Seller presently owns and operates rail service over a line of railroad running between Bowersville and Hartwell, Georgia, all as more fully described hereinbelow as the "Line"; and

WHEREAS, Seller wishes to sell to Purchaser, and Purchaser wishes to purchase, the Line, all railroad equipment located on or associated with the Line and all real property of Seller (including fixtures attached thereto) adjacent to the Line, as more fully described hereinbelow;

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. Description of Assets. Seller agrees that on the "Closing Date" (as hereinafter defined) Seller shall sell, transfer and assign to Purchaser substantially all of Seller's assets, including without limitation the following (the "Assets"):

(a) all of Seller's right-of-way and associated property between Bowersville and Hartwell, Georgia as described on Exhibit "A-1" attached hereto and incorporated herein by this reference, 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 (hereinafter collectively referred to as the "Line");

(b) all of Seller's railroad equipment and other personalty, including, without limitation:

- (1) diesel locomotive number 2 (a forty-four (44) ton locomotive);

- (1) closed locomotive number 5 (a forty-four ton locomotive)
- (111) closed locomotive number 7 a (fifty (50) ton locomotive)
- (1v) one flat car
- (v) one tie remover/lumberer
- (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) all real property of seller, together with all improvements, attachments, fixtures and personally attached thereto or located thereon and all rights, privileges, easements, horddiments and appurtenances associated therewith including, without limitation, the following (collectively, the "Subject Property"):
- (1) the real property consisting of approximately acres adjacent to the line located at Hartwell, Georgia as described on exhibit "A-2" and including the depot building located thereon
- (11) the real property consisting of approximately acres adjacent to the line located at Hartwell, Georgia as described on exhibit "A-3" and including the warehouse located thereon
- (111) the real property, consisting of approximately acres adjacent to the line located in Atlanta, Georgia as described on exhibit "A-4" and including the building located thereon and
- (1v) the real property consisting of approximately acres adjacent to the line located in Bowersville, Georgia as described on exhibit "A-5" and including the roundtable located thereon
- (d) one (1) Chevrolet truck and one (1) Ford truck
- (e) the name "Hartwell Railway Company", together with all goodwill associated therewith and

(f) any and all deposits, pre-paid accounts, contract rights, leasehold interests, permits, and other intangible property associated with any of the foregoing including, without limitation, those listed on Exhibit "B".

2. Liabilities and Encumbrances. The Assets shall be conveyed or assigned by Seller to Purchaser, free and clear of any and all liens, claims and encumbrances, except for such immaterial easements, uses and rights-of-way which do not adversely affect Purchaser's use of the Assets; and Purchaser shall not assume any liabilities or obligations of Seller of any nature, unless otherwise specifically provided for herein. Purchaser may pay any or all of the Purchase Price (as defined below) to discharge any liabilities to which the Assets are subject.

3. Earnest Money. Concurrently with the execution of this Agreement, Purchaser has deposited Five Thousand Dollars (\$5,000.00) (the "Earnest Money") with Seller's attorney, the payment and receipt of which is hereby acknowledged by Seller, to be held as earnest money for the sale and purchase of the Assets. In the event this Agreement is terminated pursuant to Section 21(a) or 21(b), Seller shall immediately return the Earnest Money to Purchaser. In the event this Agreement is terminated by Seller pursuant to Section 21(c), Seller shall be entitled to retain the Earnest Money as liquidated damages as full and complete satisfaction of any and all claims Seller may have against Purchaser.

4. Purchase Price. The aggregate purchase price ("Purchase Price") for the Assets shall be One Hundred Eighty-Five Thousand Dollars (\$185,000.00). At the Closing (as defined herein), the Earnest Money shall be applied against the Purchase Price and the balance of the Purchase Price shall be payable in cash or by check. Purchaser has concurrently delivered to Seller a letter from Purchaser's bank, confirming Purchaser's financial activity to pay the Purchase Price.

5. Commission Approval. Purchaser shall file with the Interstate Commerce Commission ("ICC") a petition for exemption concerning Purchaser's acquisition and operation of the Line. Seller agrees to pay one-half (1/2) of Purchaser's legal fees (up to Four Thousand Dollars (\$4,000.00)) incurred in connection with applying for and obtaining such ICC exemption.

6. Conveyance.

(a) Conveyance of the Line shall be made to Purchaser by limited warranty deed, in form and substance satisfactory to Purchaser, with a warranty that the Line to be conveyed to

(a) Seller is a corporation duly and validly organized and existing in good standing under the laws of the State of Georgia and is duly qualified to do business in and

Purchaser shall be unaffected by any investigation now or hereafter made by hereof and shall be true and complete on the Closing Date and representations and warranties are true and complete on the date hereby representing and warranting to Purchaser the following, which

9. Representations and Warranties of Seller. Seller route with respect to the line as of the Closing Date. entitled to all revenues for pre-paid freight and freight in as Exhibit B. (The "Business Agreements"). Purchaser shall be and losses pertaining to the Assets, attached hereto collectively of Seller's rights and obligations in the contracts, agreements, all Seller will assign to Purchaser, and Purchaser will assume, all

8. Assignment of Agreements. At and as of the Closing, Date. and apportioned between Purchaser and Seller as of the Closing property taxes and charges for or taxes on water, sewer and 7. Satisfaction of Taxes and Charges. Any real and personal

with respect to the transactions provided for herein. stamps, charges and all documentary, recording or filing fees, all costs and expenses for title inspection, subdivision, approval, surveys, transfer taxes, sales and use taxes, fees, all costs and expenses for title inspection, subdivision, approval, surveys, transfer taxes, sales and use taxes, fees, (d) Seller shall be responsible for and shall pay any and

Georgia. right, title and interest in real property in the State of (c) Seller shall convey by quitclaim deed all of Seller's

C. (The "Permitted Encumbrances"). encumbrances except those certain encumbrances listed on Exhibit limited warranty deed, in form and substance satisfactory to Purchaser, free and clear of any and all liens, claims and (b) Conveyance of the Subject Property shall be made by

however created for crossings, roads, streets and highways. and easements, public utility easements and rights-of-way payable on or after the Closing Date; any and all existing ways assessments, both general and special which may become due or municipal or local laws, ordinances and regulations; taxes and zoning, subdivision and other applicable federal, state, county, reservations, exceptions and restrictions of record; building, created by Seller. The line shall, however, be subject to trust, financing statements and other liens and encumbrances of Purchaser hereunder is free and clear of all mortgages, deeds of

is in good standing in Cayuga. Seller has full corporate power and all necessary permits and franchises to carry on the business of the Line as it is now being conducted and to own or control the Line and the Assets and to execute, deliver and perform this Agreement.

(b) The execution, delivery and performance of this Agreement by Seller have been duly authorized by all Shareholders of Seller, and does not and will not breach or violate any law, judgment, order, or decree, the Articles of Incorporation or By Laws of or pertaining to Seller or any contract or agreement to which Seller is a party or by which it or any of its properties are bound.

(c) This Agreement is valid and legally binding upon Seller and enforceable against Seller; in accordance with its terms subject to usual equitable principles and subject to the limitations on enforcement created by or arising under any bankruptcy, insolvency or other laws of general application affecting enforcement of creditor's rights.

(d) No statement of a material fact by Seller contained in this Agreement and no written statement of a material fact furnished by Seller to or to be furnished by Seller to a purchaser contains or will contain any untrue statement of a material fact or false, to Seller's actual knowledge, to contain all information necessary to make the statement or statements contained therein not materially misleading.

(e) The Business Agreements constitute all the contracts, leases, licenses and other agreements and contracts, including the Business Agreements, in full force and effect and are valid and binding obligations of the parties thereto in accordance with their respective terms. No event or default or other occurrence which after a period of time or upon notice would constitute a default or breach under the Business Agreements has occurred or is in existence. No deposit or other payment for services to be performed in the future has been made or on the closing date will be made to Seller.

(f) Seller has duly filed all Federal, state and local tax returns and reports required to be filed by it, and Seller has paid in full or made adequate provision for all taxes, interest, penalties, assessments or deficiencies shown to be due by Seller to any taxing authority or otherwise due and owing, except for those for which payment will be made to Seller.

10. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller the following, which representations and warranties are true and complete on the date

(k) Seller is conducting and has in the past conducted its business in accordance with all applicable federal, state and local laws, rules and regulations, including all applicable occupational safety and environmental laws, and Seller has not received any notice of any claimed violation of any such laws, rules or regulations. All of the licenses, permits, authorizations and approvals required by all governmental authorities having jurisdiction have been issued for the operation of Seller's business and the Assets as now being used, and are in full force and effect, all fees and charges payable with respect thereto have been paid and Seller is in compliance thereof.

(l) Seller has not received any notice of, and has no knowledge, information or belief of, any governmental assessments affecting the Assets which are unpaid (except as valuations taxes for the current year), whether or not they are or may become payable in installments. Seller has not received any notice that the Assets or any portion or portions thereof is or will be subject to or affected by any special assessments, whether or not presently a lien thereon. Seller has not received any notice that the Assets are or will be subject to or affected by any lien or any portion or portions thereof or any interest therein or is or will be subject to or affected by any condemnation or similar proceedings.

(m) The Assets are not subject to and Seller has not entered into any agreement regarding the sale, transfer or assignment of the Assets.

(n) The Assets are not subject to and Seller has not entered into any agreement regarding the sale, transfer or assignment of the Assets. The Assets are not subject to and Seller has not entered into any agreement regarding the sale, transfer or assignment of the Assets. The Assets are not subject to and Seller has not entered into any agreement regarding the sale, transfer or assignment of the Assets.

(o) There is no litigation, proceeding, labor dispute or governmental investigation of any kind pending or, to Seller's knowledge, threatened against Seller or in any way concerning the Assets.

(p) There is no litigation, proceeding, labor dispute or governmental investigation of any kind pending or, to Seller's knowledge, threatened against Seller or in any way concerning the Assets.

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(2) Purchaser is a corporation that is duly and validly organized and existing under the laws of the State of Georgia and is duly qualified to do business in and is in good standing in Georgia. Purchaser has full corporate power and authority to execute, deliver and perform this Agreement.

(c) This Agreement shall be valid only if and when the following conditions are satisfied:

(a) The ICC shall have issued an order approving or exempting from regulation purchaser's acquisition and operation of the line.

(d) Purchaser's due diligence shall reveal that the Assets are satisfactory for Purchaser's purpose in all respects and that no material adverse condition exists with respect to the Assets.

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(e) All of Seller's representations and warranties shall be true and correct at Closing.

(f) The Assets shall not suffer or be threatened with any material adverse changes or development.

(g) The representations and warranties made by Seller in this Agreement shall be true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date, and Purchaser shall have received a certificate from an executive officer of Seller to that effect.

(h) Seller shall have delivered or caused to have been delivered to Purchaser (1) a certificate of incumbency, (2) copies, certified by Seller's officers, of the Articles of Incorporation and By-Laws of Seller and resolutions of Seller's Board of Directors and Shareholders authorizing the execution, delivery and performance of this Agreement and authorizing the acts of the officers and employees in carrying out the terms and provisions hereof, and (3) a certificate from the proper state officials evidencing the good standing of Seller in Georgia.

(i) Purchaser shall have received from counsel for Seller a written opinion, dated as of the Closing Date, addressed to Purchaser in form attached hereto as Exhibit F.

(j) All proceedings, corporate or otherwise, to be taken in connection with the transactions contemplated by this Agreement and all appropriate documents incident thereto shall be satisfactory in form and substance to Purchaser and Seller shall have made available to Purchaser all records and documents which Purchaser may reasonably request in connection with the transactions contemplated hereby.

12. Closing. The consummation of the sale of the Assets (the "Closing") will take place on or before April 30, 1990 (the "Closing Date"). At the Closing, Seller shall deliver to Purchaser the deeds referred to heretofore, owner's affidavits, a Bill of Sale for the other Assets, and all such other documents and instruments as shall be reasonably requested by Purchaser or the Assets pursuant to the terms of this Agreement; Purchaser shall deliver to Seller the purchase price specified heretofore; and Seller and Purchaser shall enter into the assignment and assumption of Business Agreements concerning the line, all as described heretofore. Exclusive possession of the Assets shall

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be delivered to Purchaser at the Closing. Seller shall bear all risk of loss with respect to the Assets prior to Closing.

13. Closing Costs. Seller shall be responsible for and shall pay any and all costs and expenses for transfer taxes, sales and use taxes, fees, stamps, charges, and all documentary, recording or filing fees with respect to the sale of the Assets.

14. Proration of Taxes and Charges. Any and all real and personal property taxes and charges for water, sewer and utilities pertaining to the Assets shall be prorated, adjusted and apportioned between Purchaser and Seller as of the date of the Closing.

15. Expenses. All legal and other costs and expenses incurred in connection with the Closing of the sale of the Assets shall be paid by the party or parties incurring such expenses (except as otherwise provided in Paragraph 5 above).

16. Employees. After the Closing, Purchaser may, in its discretion, employ certain of Seller's employees upon terms and conditions acceptable to Purchaser. Purchaser will not be liable for or assume any other employment contracts, benefits, accrued vacation, or any other employment liabilities of any kind including liability for wages, salaries, pensions, or employment taxes, all of which Seller shall pay, discharge or otherwise provide for at Closing.

17. Due Diligence. Purchaser and its representatives may, at reasonable times, visit the premises of Seller and inspect the Assets, and Seller shall provide full access to Purchaser and its representatives to all of the books, properties, contracts, commitments and records of Seller for the purpose of examining and conducting a prudent due diligence inquiry of Seller's operations and the Assets, including, at Purchaser's option, an environmental survey. Seller and its officers, employees and agents shall cooperate and assist in every respect with Purchaser and its representatives in connection with this inspection.

18. Use of Name. Purchaser agrees to operate the Line under the name "Hartwell Railroad Company" after the Closing Date. Seller agrees to change its name promptly after Closing to a name bearing no resemblance to "Hartwell Railway Company."

19. Management Prior to Closing. Seller hereby agrees that from the date of this Agreement until the Closing, Seller will operate and manage the Line as follows:

(a) Except as otherwise provided below, Seller will be responsible for all costs and expenses incurred in connection with the management and operation of the Line.

(b) Seller at its expense will provide materials, including without limitation, cross ties and spikes, determined by Purchaser to be necessary or appropriate for the maintenance, repair and operation of the Line. The materials supplied by Seller will be included in the Assets without any increase in the Purchase Price. However, in no event shall the cost of materials exceed \$5,000.00.

(c) Purchaser will provide labor to replace and install the cross ties and spikes, at no expense to Seller, except, Seller will reimburse Purchaser for travel expenses (\$.25 per mile for cars and \$.32 per mile for trucks) and meals (\$10.00 per day per employee) incurred by Purchaser or its employees in connection with such replacement and installation.

(d) Seller hereby releases Purchaser and agrees to indemnify Purchaser, its employees and agents, against any and all loss, liability and expense resulting from or arising out of all actions of Purchaser taken in connection with the terms of this Section 19.

(e) Seller shall diligently conduct its business and maintain its Assets in the ordinary course of business and in a manner consistent with prudent business practices.

20. Brokerage Indemnification. Seller represents that it has not engaged any broker or finder and shall indemnify Purchaser against any and all claims for the payment of brokerage commissions or finders fees in connection with the transactions contemplated herein.

21. Termination.

(a) This Agreement may be terminated by written agreement between Purchaser and Seller without further liability or obligation.

(b) This Agreement may be terminated prior to the Closing by Purchaser without further liability or obligation, in the event of any of the following: (1) the ICC fails or refuses to approve the transaction provided herein or issues an injunction prohibiting the consummation of the transactions as contemplated herein; or (2) any representation or warranty of Seller herein is not true and complete on the date hereof or the Closing Date, or (3) Seller has failed to perform any of its covenants or obligations hereunder prior to Closing.

(c) This Agreement may be terminated prior to the Closing by Seller without further liability or obligation in the event any

[illegible][illegible][illegible]

22. Indemnification.

Norfolk Railway Company
Railroad and Jackson
Martwell, Georgia 30643
Attn: President

(a) If to Seller:

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

28. Applicability. This Agreement shall be construed in accordance with the laws of the State of Georgia.

27. Joint Cooperation. Seller and Purchaser shall fully and diligently support the transactions contemplated herein before the ICC, courts and all administrative and governmental agencies. After the Closing Date, each party hereto shall, at any time and from time to time after the reasonable request of the other party, furnish such other party with such documents, instruments, and papers, and shall take all such lawful steps as the other party may reasonably require, for the full carrying out of the purposes of this Agreement.

26. No Encumbrances. Seller covenants and agrees that from the date hereof to the Closing Date, Seller will not mortgage, pledge, or otherwise further encumber the Assets or any portion thereof.

25. Nonassumption of Liability. Except as to those business agreements pertaining to the line which Purchaser agrees to assume under Section 8 hereinafter, Purchaser shall have no obligation or liability for any claim or cause of action involving the ownership or operation of the Assets after the Closing. Seller shall have no obligation or liability for any claim or cause of action involving the ownership or operation of the Assets after the Closing.

24. Assignment of this Agreement. Except as to those business agreements pertaining to the line which Purchaser agrees to assume under Section 8 hereinafter, Purchaser shall have no obligation or liability for any claim or cause of action involving the ownership or operation of the Assets after the Closing. Seller shall have no obligation or liability for any claim or cause of action involving the ownership or operation of the Assets after the Closing.

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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
1081 North Cherokee
Social Circle, Georgia 30279
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.

30. Paragraph Headings. The paragraph headings set forth herein are for convenient reference purposes only and are not meant to, and shall not, affect in any way the meaning or interpretation of the provisions of this Agreement.

31. 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.

"SELLER"

HARTWELL RAILWAY COMPANY

By: _____
Title: _____

Attest: _____
Title: _____

[CORPORATE SEAL]

"PURCHASER"

THE GREAT WALTON RAILROAD COMPANY

By: _____
Title: _____

Attest: _____
Title: _____

[CORPORATE SEAL]

21 \ WFOCR \ BFW \ BOB \ GREATWALL.PUB

SENT BY: TROUTMAN SANDERS

: 3-14-90 : 11:18 :

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TROUTMAN, SANDERS, LOCKERMAN & ASHMORE
Candler Building, Suite 1400
127 Peachtree Street, N.E.
Atlanta, Georgia 30303-1810
404/658-8000

Telecopiers: (404) 658-5947 (7th Floor)
(404) 221-0469 (Word Processing Center)
(404) 658-8462 (10th Floor)
(404) 658-8360 (12th Floor)
(404) 658-8405 (15th Floor)

Date: March 14, 1990

Time: 10:49am

PLEASE DELIVER THIS TRANSMISSION TO:

Name: Noreta R. McGee
Company or Firm: Interstate Commerce Commission
City and State: Washington, D. C.
Telecopy No.: 202/275-9237
Telephone No.: 202/275-7428

From: John R. Kohn
Number of Pages (including this cover sheet):
Client/Matter No.: 84047.57935
Message:

IF PROBLEMS OCCUR, PLEASE CALL 658-5947 (7TH FLOOR), 658-8438 (WORD
PROCESSING CENTER), 658-8445 (10TH FLOOR), 658-8258 (12TH FLOOR),
OR 658-8231 (15TH FLOOR)

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SENT BY: TROUTMAN SANDERS

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TROUTMAN, SANDERS, LOCKERMAN & ASHMORE

ATTORNEYS AT LAW

CHABLES BUILDING, SUITE 1400

167 PEACHTREE STREET, N.E.

ATLANTA, GEORGIA 30303-4829

ADAMS 828-8200

CABLE: MASTERS

TELECOM: 404-821-0400

JOHN R. HOLM

MAIL ROOM DIRECT MAIL NUMBER
404-828-8107

March 14, 1990

JOHN R. HOLM

Ms. Norata R. McGee
Secretary
Interstate Commerce Commission
ATTN: Mail Room (Room 81324)
12th Street & Constitution Avenue, N. W.
Washington, D. C. 20423

FD-31626



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. Holm
John R. Holm

JRM:jm

cc: Beryl Gordon

Ms. Norat
Secretary
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ATTN: Ms
12th Stre
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RE: Not

Dear Ms.

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March 14,
Hartwell
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HARTWELL RAILROAD COMPANY

The Athens Line, LLC The Great Walton Railroad, Inc


[Great Walton Line](#)

About Hartwell Railroad Company

[The Athens Line](#)

The Hartwell Railroad Company was chartered in 1878, and its 10-mile line from Hartwell to Bowersville was completed in late 1879. In 1898, it was reorganized as the Hartwell Railway.

[Hartwell Line](#)

Southern Railway gained control of the line in 1902 and converted it from 3-foot gauge to standard gauge in 1905. The Hartwell's narrow-gauge wood-burner Nancy Hart was then replaced with a larger coal-burning engine.

[Gallery](#)

In 1917, Poor's Manual of the Railroads reported that the Hartwell still only operated one locomotive and one passenger car. In 1924, Southern sold the line to a group of local businessmen. In 1990 Bennie Ray Anderson purchased and still owns the line. In 1995 the name was changed and still operates today under Hartwell Railroad Company.

[Map Overview](#)
[Inventory](#)
[Economic Development](#)

In addition to its original line, the Hartwell now operates the 48-mile former Norfolk Southern line between Toccoa and Elberton.

[Contact Us](#)

Reporting mark: HRT



[\[Great Walton\]](#) [\[The Athens Line\]](#) [\[Hartwell Railroad\]](#) [\[Map Overview\]](#) [\[Services\]](#) [\[Inventory\]](#) [\[Contact Us\]](#) [\[Shallow Pocket Web Design, Inc\]](#)

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THE GREAT WALTON RAILROAD, INC

The Athens Line, LLC Hartwell Railroad Company


[Great Walton Line](#)

About Great Walton Railroad

[The Athens Line](#)

The Great Walton is a short line railroad company operating a 10-mile line between Monroe and Social Circle since 1987. The railroad's offices are in Social Circle.

[Hartwell Line](#)

The Monroe-Social Circle line was constructed in 1880 as the Walton Railroad. It later became a branch of the Georgia Railroad.

[Gallery](#)

The Great Walton also operates the Hartwell Railroad and the former Norfolk Southern line between Toccoa and Elberton (built as Elberton Air-Line Railroad).

[Map Overview](#)

In December of 2001, the Great Walton leased from Norfolk Southern a section of former Central of Georgia track between Madison, Athens, and Center (a community in Jackson County). This is now operated as the Athens Line using Hartwell Railroad equipment.

[Inventory](#)

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THE ATHENS LINE, LLC

The Great Walton Railroad, Inc Hartwell Railroad Company

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About The Athens Line, LLC

The Athens Line operates on former Southern Railway tracks between Center, in Jackson County, and Athens. It is owned by Bennie Ray Anderson, who also owns the Great Walton Railroad and the Hartwell Railroad Company. The latter railroad operates the Athens Line.

On the south side of downtown Athens, the railroad passes by Sanford Stadium to deliver coal to the University of Georgia's power plant. The former Central of Georgia tracks extend as far south as Madison with services provided down to Bishop.

Reporting mark: ABR



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THE GREAT WALTON RAILROAD, INC.

The Athens Line, LLC Hartwell Railroad Company


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Contact Us

If you would like more information, have a question or would like to send us feedback, please fill in the form and we will contact you back.

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Great Walton Railroad
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Social Circle, Ga. 30025

The Athens Line, LLC
1096 North Cherokee Rd.
Social Circle, Ga. 30025

Hartwell Railroad Company
5245 Bowersville Hwy.
Bowersville, Ga. 30516

Name:

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City:

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GEORGIA CORPORATIONS DIVISION

GEORGIA SECRETARY OF
STATE
BRIAN P. KEMP

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BUSINESS SEARCH

BUSINESS INFORMATION

Business Name: **HARTWELL RAILROAD COMPANY** Control Number: **K508049**

Business Type: **Domestic Profit Corporation** Business Status: **Active/Owes Current Year AR**

Business Purpose:

Principal Office Address: **PO Bpx 429, Hartwell, GA, 30643** Date of Formation / Registration Date: **3/9/1995**

State of Formation: **Georgia** Last Annual Registration Year: **2015**

REGISTERED AGENT INFORMATION

Registered Agent Name: **MARY KATE ANDERSON**

Physical Address: **1081 NORTH CHEROKEE CIRCLE, Walton, SOCIAL CIRCLE, GA, 30025, USA**

OFFICER INFORMATION

Name	Title	Business Address
B.R. SR., ANDERSON	CEO	1081 NORTH CHEROKEE ROAD, SOCIAL CIRCLE, GA, 30025, USA
CLAIRE TREADWELL, A	Secretary	1106 N CHEROKEE RD, SOCIAL CIRCLE, GA, 30025, USA
B.R. SR., ANDERSON	CFO	1081 NORTH CHEROKEE ROAD, SOCIAL CIRCLE, GA, 30025, USA
Mary Treadwell, Claire		1106 N. Cherokee Rd., Social Circle, GA, 30025, USA

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

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

TRANSCRIPT TESTIMONY OF
WITNESSES AND JUDGE'S DIRECTIVES

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

APPEARANCES:

FOR THE PLAINTIFF:	WALTER JAMES GORDON, SR.
	P.O. BOX 870
	HARTWELL, GA 30643
	776-376-5418
FOR THE DEFENDANTS:	MATTHEW D. WILLIAMS
	2215 PILGRIM MILL CIRCLE
	CUMMING, GA 30041
	770-815-9331

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

I N D E X

FEBRUARY 9, 2017

BENNIE RAY ANDERSON - WITNESS

ATTORNEY:	Direct	Cross	Redirect	Recross
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JONATHAN TALBOT COLEHOWER - WITNESS

ATTORNEY:	Direct	Cross	Redirect	Recross
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CHARLES DAVID BISHOP - WITNESS

ATTORNEY:	Direct	Cross	Redirect	Recross
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JOSEPH WHITTEMORE - WITNESS

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

4 THE WITNESS: I do.

5 THE COURT: How are you, sir?

6 THE WITNESS: Fine, sir.

7 THE COURT: Good. Just make sure you speak into the
8 microphone. The court reporter has got to take all this down
9 so she needs to hear you; as well as I need to hear you. Tell
10 us your name and spell it for the court reporter.

11 THE WITNESS: Bennie Ray Anderson. I'm the owner and
12 President of the Hartwell Great Walton Railroad.

13 THE COURT: Your first name is?

14 THE WITNESS: Bennie.

15 THE COURT: Bennie. Spell it for her. She's going
16 to write this down so want to make sure we don't misspell your
17 name.

18 THE WITNESS: B-E-N-N-I-E (Spelling).

19 THE COURT: And Anderson is O-N or E-N (spelling)?

20 THE WITNESS: O-N (spelling).

21 THE COURT: All right. Y'all can either question him
22 from there, as long as she can hear you, or you can go to the
23 lecture, whatever you are most comfortable doing.

24 MR. WILLIAMS: I would prefer the lectern, but we had
25 technical difficulties over there.

1 THE COURT: Okay. So that's not working. All right.

2 MR. WILLIAMS: With Your Honor's permission, may I
3 remain seated?

4 THE COURT: Yes. That would be fine.

5 BENNIE RAY ANDERSON

6 Witness having been first duly sworn, testified on

7 DIRECT EXAMINATION

8 BY MR. WILLIAMS:

9 Q Mr. Anderson, where were you born?

10 A Social Circle, Georgia.

11 Q What year was that?

12 A 1935.

13 Q And how far did you go in school?

14 A Eighth grade.

15 Q And where did you grow up?

16 A Social Circle.

17 Q And tell me about your business background, if you
18 would, please?

19 A Oh, I've been in several businesses and still am.
20 But I got in the railroad business in 1987, I bought my first
21 one.

22 Q And which railroad was that?

23 A That was from Social Circle to Monroe, Georgia.

24 Q And what's the name of that railroad?

25 A The Great Walton Railroad.

1 Q What was your next railroad acquisition?

2 A The next acquisition was in 1990, bought the
3 Bowersville to Hartwell Railroad.

4 Q And is that the railroad we're here about today?

5 A That's correct.

6 Q And who did you buy that from?

7 A The Hartwell Railway.

8 Q That was an asset purchase; is that right?

9 A That's correct.

10 Q You created your own company for that purchase?

11 A That's right. I changed it to Hartwell Railroad.

12 Q And, when you did that, were you granted operating
13 authority by the Surface Transportation Board?

14 A That's correct, I did.

15 Q Actually it was the ICC back then, wasn't it?

16 A That's right.

17 THE COURT: When did you say you bought that
18 railroad?

19 THE WITNESS: 1990.

20 THE COURT: 1990. Or the assets?

21 MR. WILLIAMS: For the record, Your Honor -- yeah.

22 The ICCTA was created in 1995, that's when the Surface
23 Transportation Board was created. So it was previously under
24 the ICC.

25 THE WITNESS: That's correct.

1 BY MR. WILLIAMS:

2 Q So you received your operating authority originally
3 from the Interstate Commerce Commission?

4 A That's correct.

5 Q And describe that railroad for us, just a little bit.
6 Where does it run and what's it made up of?

7 A It's a nine mile line. It ran from Bowersville,
8 Georgia to Hartwell, Georgia and it dead end -- the end of the
9 track was in Hartwell. We interchanged with Norfolk Southern
10 at Bowersville.

11 Q And when you say interchange, what does that mean?

12 A That means we picked up loads of empty cars to be
13 loaded and carried and unloaded.

14 Q And what kind of customers did you have on the
15 Hartwell line?

16 A We had several companies. We have Mica Mines, which
17 would haul sand, and then we had Hartwell Grain and Elevator
18 which would handle corn, wheat and agricultural commodities.
19 Plus Gold Kist was a fertilizer company there in Hartwell. And
20 Monroe -- it was called Monroe back then, which was Monroe
21 Shock Absorbers and they changed the name. Tenneco bought them
22 out, that's when they changed to Tenneco, but we brought oil in
23 to them.

24 Q You also have a customer called Quality?

25 A We do have a customer now Quality. They were not on

1 board in '90.

2 Q Did you buy anymore railroads after that?

3 A Yes, sir. I bought the one from Toccoa to Elberton,
4 Georgia in '95.

5 Q And what's the name of that railroad?

6 A Hartwell Railroad.

7 Q Who did you buy it from?

8 A Norfolk Southern.

9 Q And is that the railroad that now connects with the
10 Hartwell line in Bowersville?

11 A That's correct.

12 Q And who does the Hartwell Railroad that runs from
13 Toccoa to Elberton connect with?

14 A We connect with Norfolk Southern in Toccoa and a year
15 ago we put in an interchange track with CSX at Elberton. So
16 now we are connected to two Class I railroads.

17 Q And throughout the history of the Hartwell line, has
18 the Hartwell line always been connected to the interstate rail
19 network as far as you know?

20 A Yes, sir.

21 Q Did you buy any other railroads?

22 A We leased the one in Athens from Center to Madison,
23 Georgia in 2000. And in the agreement we had the right to
24 purchase it and we are in the process of purchasing it now.

25 Q Is that the railroad track that runs behind Sanford

1 Stadium?

2 A That's correct.

3 Q What are your duties with the railroad?

4 A All of it, from engineer to working on tracks. That
5 covers all of it. And day to day operations.

6 THE COURT: You don't swing the hammer knocking down
7 the spikes into the crossties, do you?

8 THE WITNESS: Occasionally.

9 THE COURT: You still do that?

10 THE WITNESS: I still do that.

11 BY MR. WILLIAMS:

12 Q And you're a qualified engineer; is that correct?

13 A That's correct.

14 MR. WILLIAMS: And, Your Honor, when I say engineer
15 I'm talking about the gentleman that operates the train, not
16 the guy that works on the blueprints.

17 THE COURT: I understand.

18 BY MR. WILLIAMS:

19 Q You're also qualified as a conductor; is that right?

20 A That's correct.

21 Q Explain the difference between an engineer and a
22 conductor, please?

23 A An engineer operates the locomotives and a conductor
24 does the groundwork in connecting cars and the paperwork.

25 Q Now what is the relation -- we have two Defendants in

1 THE COURT: Okay.

2 THE WITNESS: And so we were rehabbing it when we had
3 the stop order.

4 THE COURT: So before you had Quality you didn't have
5 any need, at the moment, for the runaround because you weren't
6 bringing freight down that far down the line, correct?

7 THE WITNESS: That is correct.

8 THE COURT: So how long ago -- how long has it been
9 that you've had Quality?

10 THE WITNESS: The new owners bought it about nine
11 months ago or ten months ago.

12 THE COURT: So you haven't served them yet?

13 THE WITNESS: Yes, sir, we're serving them now.

14 THE COURT: But you're serving them without the
15 runaround?

16 THE WITNESS: Without the runaround.

17 THE COURT: So you're bringing the cars in and
18 backing them into their sidetrack?

19 THE WITNESS: That's correct.

20 THE COURT: Then leaving them there -- are you having
21 to push them back or are you pulling them back?

22 THE WITNESS: We pull them out and then we have to
23 push them back, which is not safe. So that's why we have spent
24 the money to rehab the track, as we call it, all the way -- the
25 mainline and was rehabbing the runaround, that way we could

1 cars to either be loaded or unloaded. And the same way with
2 the fertilizer company.

3 THE COURT: So you have used the runaround as a
4 runaround since you've owned the Hartwell line?

5 THE WITNESS: Yes, sir, up until '08 when Hartwell
6 Grain and Elevator went out of business.

7 THE COURT: Okay. So in '08 that's when you stopped
8 using the runaround?

9 THE WITNESS: That's correct.

10 THE COURT: But it's your testimony that before '08
11 you used that part of the track as a runaround. That was the
12 purpose of it?

13 THE WITNESS: That's correct. That was the only
14 way --

15 THE COURT: It wasn't a sidetrack to go to some
16 private business, it was a runaround so that you could serve
17 private businesses along the mainline?

18 THE WITNESS: That's correct. We had to have that.
19 And people prior to me buying it had to have that runaround to
20 get around their cars.

21 THE COURT: So you would push --

22 THE WITNESS: We would pull the cars in.

23 THE COURT: -- them empties all the way down to the
24 terminus?

25 THE WITNESS: We'd pull them all the way in, cut off

1 and go around and get on the other end and push them. But
2 because Hartwell Grain and Elevator was right at the end of the
3 line that's where they had the grain bins and they unloaded the
4 cars and loaded them back.

5 THE COURT: Okay. So you would pull them --

6 THE WITNESS: From Bowersville.

7 THE COURT: -- you would pull them and then you would
8 stop your train right past the runaround and move it up the
9 other way?

10 THE WITNESS: Stopped right in the middle of the
11 runaround.

12 THE COURT: Okay.

13 THE WITNESS: And then get on the other end and then
14 push them back to the end of --

15 THE COURT: You pushed them to the back?

16 THE WITNESS: To the back, that's correct.

17 THE COURT: And then pulled them out when they were
18 empty?

19 THE WITNESS: That's correct.

20 THE COURT: So the whole thing here is you want to
21 pull them in and you want to pull them back, you don't want to
22 have to pull them in and push them back?

23 THE WITNESS: That's correct.

24 THE COURT: But it's your testimony that from the
25 time you owned the company up until 2008 that area was used as

1 A He -- as we refer to it -- hangs on the side of the
2 car. He puts his foot up on the steps and holds on to the grab
3 iron.

4 Q And roughly how long does it take to -- when you're
5 shoving -- because that's what you're doing right now, isn't
6 it, you're shoving?

7 A That's right.

8 Q How long does it take to get from downtown Hartwell
9 back to Bowersville right now when you're shoving?

10 A An hour and a half to two hours.

11 THE COURT: Well, who are you shoving for now? I
12 thought Quality you could push them down their side track?

13 THE WITNESS: No. We just push them in the track to
14 load. It's a dead-end track once you shove the cars in. And
15 see we were only -- we've only done this a short spell because
16 the company that bought them -- before this company bought them
17 out it was still called Quality Industries and it still is.
18 But under that name they still use it -- we only brought one
19 car in about every couple of months or so. And then when this
20 company bought them out nine months ago and they got more
21 machinery and more customers and using more rail cars and
22 predicting --

23 THE COURT: You're pulling them into Quality and
24 backing them into their side track?

25 THE WITNESS: Yeah. We pull past their switch and

1 then push them into their side. There is silos to be unloaded.

2 THE COURT: And then you pull the locomotive back
3 toward where it came from -- well, no you can't do that, can
4 you? So the empties at Quality you're having to push back up?

5 THE WITNESS: That's correct. And that's why we were
6 rehabbing the runaround to get around that.

7 THE COURT: And the FRA said you can do that but
8 you're just saying they think it's less safe?

9 THE WITNESS: They don't -- I mean, it's permissible
10 but you've got to stop at every crossing and flag it and then
11 he remounts and goes.

12 THE COURT: Anything else?

13 MR. WILLIAMS: I believe that's all I have for Mr.
14 Anderson, Your Honor.

15 THE COURT: All right. Why don't we take about ten
16 minutes and then we'll come back for the cross examination.
17 And then we may take a lunch break and have to get Mr. Bishop
18 after lunch. How long do you think Mr. Bishop is going to
19 take?

20 MR. WILLIAMS: Twenty-five minutes.

21 THE COURT: We'll play it by ear.

22 MR. WILLIAMS: Your Honor, I have one other witness.
23 I brought Jonathan Colehower, he is the CEO of Quality and this
24 is a big deal to him and he wanted to come and --

25 THE COURT: Well, we'll try to get these witnesses in

1 BY MR. GORDON:

2 Q But, Mr. Anderson, you believed that you didn't need
3 that, right?

4 A Did not need the runaround track?

5 Q No. You didn't need a title examination?

6 A No, sir, that's pretty common in buying a railroad.

7 Q Tell me how many cars you handle for Quality
8 Industries today?

9 A Today?

10 Q Yes.

11 A You mean for how long a period?

12 THE COURT: He said for how long a period? Weekly,
13 daily, a year?

14 BY MR. GORDON:

15 Q You can define that. I'd like to know daily, but if
16 it's weekly --

17 A Right. At the present time, two a month.

18 Q Two cars per month?

19 A Per month.

20 Q Have you had a commitment for service from Quality
21 Industries?

22 A That's correct, we do.

23 Q Do you have a copy of that commitment for service
24 from Quality?

25 A Not uncommon to have a prediction of what they're

1 going to grow their business, which you are there to service
2 them under the STB.

3 Q Mr. Anderson, do you understand that there is a
4 distinction between a prediction and a commitment for service
5 on a railroad?

6 A Yes, sir, I understand that.

7 Q So you don't have a commitment from Quality. You
8 have a prediction from Quality that they may use more?

9 A We have an obligation to however many cars they order
10 that we deliver them to them. That's our commitment.

11 Q But their current commitment to you is two cars a
12 month?

13 A Correct.

14 Q For which you do not need the runaround?

15 A No, sir, we need the runaround.

16 Q But you're using it without the runaround now?

17 A That's the reason we are here today to finish to
18 where we can use it. We need it for safety reasons, as well as
19 economics.

20 Q Let's talk about, just for a moment, what else you
21 would have to do other than rebuild the church spur track.
22 Would you have to rebuild the track across Webb Street?

23 A Yes, sir, and we've already got it.

24 Q And you have not done that yet, right?

25 A As soon as we get this lifted we hope we will.

1 THE COURT: Well, why don't we just wait until the
2 end and you can just put them all in in bulk.

3 MR. GORDON: Very well, thank you.

4 THE COURT: Let's do this. We're going to have to
5 take a lunch break. The business man, who is just going to
6 come in here and tell me how important this is, we can do that
7 in five or six minutes, can't we?

8 MR. WILLIAMS: I would think so, yes, sir.

9 THE COURT: Well, let's get him in. Sir, you may
10 step down.

11 THE WITNESS: Thank you.

12 THE COURT: Right up here, sir. We're going to try
13 to get you out of here so you can go back to work or wherever
14 you want to go. Raise your right hand and take the oath.

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

18 THE WITNESS: I do.

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

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

25 THE COURT: Mr. Williams?

1 JONATHAN TALBOT COLEHOWER

2 Witness having been duly sworn, testifies on

3 DIRECT EXAMINATION

4 BY MR. WILLIAMS:

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

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

9 Q And what is your basic education and business
10 background, very quickly?

11 A So, I graduated from business school at Vanderbilt
12 and I spent the next eight years or so in management consulting
13 at Accenture, I was then in the software business. Always
14 around supply chain and manufacturing at Oracle for five years,
15 and then I was the CEO of a software company up in Boston for a
16 few years, and then I was with a management consulting firm,
17 McKenzie and Company, for several years and then just recently
18 I was the chief marketing officer for Manhattan Associates
19 which is a software company based in Atlanta, Georgia.

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

21 A Yep. Quality Holdings is a business that has been
22 active for probably 20 years. It is based in Hartwell,
23 Georgia. It was recently sold by the owner, his name was Tom
24 Habel. Tom Habel sold the business to a private equity firm
25 named Jordan-Blanchard Capital out of Columbus, Georgia, and

1 and the EBITA, the earnings before taxes and interest, was up
2 40 percent. So we're a 10 million dollar business in 2016,
3 and my forecast for 2017 is that we'll be somewhere around
4 12 million.

5 Q And how is that going to affect your need for rail
6 service?

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

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

10 A Correct.

11 Q And how much product or how much material is in a
12 single rail car?

13 A Two-hundred thousand pounds.

14 Q And how would changing to truck affect your business?

15 A So, one of the nice things about the product that we
16 buy is this polyethylene, these pellets, are a commodity. So
17 anybody can look out on the web and find out what the price is
18 on any given day. So, right now we pay 72 cents per pound. If
19 I were to do that by truck that would be 80 cents a pound. So
20 it's about a 10 percent cost reduction -- cost advantage that
21 we have by being on the rail spur.

22 Q And how many cars did you get in 2016?

23 A Twenty-one in the year.

24 Q And what is your forecast for 2017?

25 A I'm expecting we'll have 25.

1 Q And are there other opportunities that you're
2 exploring because you are rail served?

3 A Yes. We have -- I'm looking at two opportunities
4 right now. We've got one rotational molding company, which is
5 located in Toccoa, Georgia, they've asked if we would
6 pulverize, essentially turn this into this (demonstrating) for
7 them because they don't have the capacity to do it. They've
8 asked if we would do a million pounds. So, last year we did
9 four million pounds and that would be an additional million on
10 top of that.

11 Q And what role -- what was the significance of rail
12 service for your parent company when they shopped this
13 particular property?

14 A Well, I think it was huge. I mean, having the rail
15 spur gives you a cost advantage in the market. I'd love to say
16 that our customers come to us because of our product quality or
17 our service, but there is no doubt that price is a huge factor
18 and having that price advantage gives us an advantage in the
19 market.

20 Q And how would your business be impacted without rail
21 service?

22 A A couple of ways. One, would be that we would have a
23 price increase for sure. Ten percent, at lease, price
24 increase, and that doesn't include all of the extra material
25 handling from what we do today. So that would be an immediate

1 impact. I would then have to figure out either how we're going
2 to make up that difference or how I can approach my customers
3 and ask them or basically tell them that we're going to have a
4 10 percent price increase.

5 The second would just be from an overall logistics
6 standpoint. Bringing a rail car in for us is fairly
7 straightforward. The rail car comes in, we connect a tube
8 underneath it, that tube automatically gets pulled in through a
9 vacuum into the pulverizer to produce this. If we have to
10 start buying in a bulk truck, now I have to unload it, move the
11 material over to the pulverizer and then somehow get it up into
12 a gravity feed or some sort of a way to get it into the top of
13 the pulverizer. So there are business process changes as well
14 as the economics.

15 Q You're aware of the dispute that's going on between
16 the railroad and the Methodist Church. How far is your plant
17 from the church?

18 A A mile. I don't know for sure. I don't want to say
19 exactly. I would say a mile, but I don't know exactly.

20 Q Are you in favor of the railroad being able to
21 improve its service to you?

22 MR. GORDON: Your Honor, I object to the question.

23 MR. WILLIAMS: I'll withdraw it.

24 THE COURT: All right. I think he has covered the
25 essential information that I need to know.

1 MR. WILLIAMS: I don't have anything further. Thank
2 you very much.

3 THE COURT: Cross examination?

4 CROSS EXAMINATION

5 BY MR. GORDON:

6 Q Mr. Colehower, just a very few questions. You've
7 been able to handle your business and the dramatic increase
8 that you've had with your current rail service; is that
9 correct?

10 A Yes, sir.

11 Q And I believe that you testified that what you
12 anticipate doing was adding four cars in 2017?

13 A That's my current forecast, yes.

14 Q That would be to go from 21 cars to 25 cars?

15 A Correct.

16 Q And your current service is satisfactory; is that
17 right?

18 A Correct.

19 Q And all of the concerns that you have about moving
20 to truck that presumed that there was no rail service, correct?

21 A Correct.

22 Q So if you continue to have rail service, from your
23 perspective, you're fine, right?

24 A Right.

25 Q Thank you.

1 take a long hour and a half lunch break. The rest of us will
2 be in recess until 2:30.

3 (RECESS)

4 THE COURT: We are going to resume the hearing in the
5 case of Hartwell First United Methodist Church, Inc. versus
6 Hartwell Railroad Company, et al. case 3:16-CV-169. Mr.
7 Williams, have you got another witness?

8 MR. WILLIAMS: I do, Your Honor. I call Dave Bishop,
9 please.

10 THE COURT: All right. Dave Bishop. Sir, if you
11 would come to the witness stand to your right.

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

15 THE WITNESS: Yes.

16 THE COURT: Get situated so you're speaking into that
17 microphone. State your name and spell it for the court
18 reporter?

19 THE WITNESS: Charles David Bishop. C-H-A-R-L-E-S,
20 D-A-V-I-D, B-I-S-H-O-P (spelling).

21 CHARLES DAVID BISHOP

22 Witness having been first duly sworn, testified on

23 DIRECT EXAMINATION

24 BY MR. WILLIAMS:

25 Q Mr. Bishop, where do you live?

1 A Monroe, Georgia.

2 Q Where did you go to school?

3 A University of Tennessee.

4 THE COURT: You're not supposed to admit that when
5 you're in his jurisdiction.

6 THE WITNESS: I know. I'm persona non grata.

7 THE COURT: We won't hold it against you.

8 MR. WILLIAMS: That's why I'm not going to take it
9 easy on him either, Judge.

10 THE COURT: We're going to blame that on your lawyer
11 for asking you the question, but go ahead. What's next?

12 BY MR. WILLIAMS:

13 Q Were you in the military?

14 A Yes.

15 Q What did you do in the military?

16 A I was a pilot in the Air Force.

17 Q What did you fly?

18 A B-52s.

19 Q And what have you done railroad wise in your
20 career?

21 A I've been working for the railroad since October of
22 '95.

23 Q And what was your first railroad job?

24 A Great Walton Hartwell Railroad.

25 Q Working for Mr. Anderson?

1 A Yes.

2 Q What was your job title or your duties?

3 A General manager.

4 Q What does general manager do for the Hartwell
5 Railroad?

6 A Involved in all functions of the day-to-day
7 operations, legal, regulatory and other matters.

8 Q I couldn't understand the last part, Mr. Bishop.

9 A Regulatory and other matters.

10 Q Did you actually operate trains?

11 A No.

12 Q Never got certified?

13 A No.

14 COURTROOM DEPUTY: Mr. Williams, are you plugged in
15 to the HDMI cable?

16 MR. WILLIAMS: I am. Am I not showing up? Let me do
17 my check to make sure.

18 (Working on video system)

19 MR. WILLIAMS: I'm going to start a reboot on it and
20 I'm betting that will fix it, and I'll keep asking him some
21 preliminary questions while I wait for it to reboot.

22 BY MR. WILLIAMS:

23 Q Describe some of the duties you did for the railroad
24 during your -- you're retired now; is that right?

25 A Right.

1 Q When did you retire? The first time?

2 A I attempted to retire on February 13th -- April
3 the 13th.

4 Q Of what year?

5 A 2013.

6 Q How many times have you retired since then?

7 A Apparently several.

8 Q And describe all the various things that you would do
9 for the Hartwell Railroad? You were the general manager for
10 all the railroads; is that right?

11 A Correct.

12 Q Describe what you would do for them?

13 A I did a lot of administrative work, as far as
14 agreements and so on. I did some day-to-day operational things
15 as far as manifest and other activities like that, right-of-way
16 issues, regulatory issues and day-to-day administrative
17 activities.

18 Q What kinds of agreements did you deal with?

19 A Generally lease agreements for encroachments and
20 other matters of that nature.

21 Q What do you mean by an encroachment?

22 A Either a pipeline, wire line, or other activity that
23 required use of the right-of-way.

24 Q Did you have a system that you used, a series of
25 agreements that you kept on file, for all these different kinds

1 Clinksscales?

2 A Yes.

3 Q His servants and assigns and all others -- I'm sorry
4 and all users of said industrial track and the right-of-way
5 therefore?

6 A Yes.

7 Q Now, in your time with the railroad has anyone ever
8 talked to you about the Clinksscales track and any concern that
9 they may have that the Clinksscales heirs could terminate the
10 agreement?

11 A No, it's not to me.

12 Q You are familiar with the TORCH agreement. I
13 believe you testified that you were involved in the negotiation
14 of it?

15 A Yes.

16 Q I certainly don't expect you to recall the various
17 terms of the TORCH agreement.

18 MR. GORDON: Your Honor, might I approach the witness
19 with a copy?

20 THE COURT: Yes.

21 BY MR. GORDON:

22 Q This appears in the Court record as Court document
23 14.1 and it will also be entered into evidence as Plaintiff's
24 8. Is that the agreement that resulted -- is that the
25 agreement that you were working on, the agreement that came

1 about that put the -- that leased the tracks and buildings to
2 the nonprofit group TORCH?

3 A Yes.

4 Q Does that agreement -- I believe it's paragraph 14 or
5 Article 14. Article 14 on default, page 11. Do you see that?

6 A Yes.

7 Q And it talks about events of default and then it
8 gives five separate matters that could occur. Is it true that
9 all of those five matters that could occur, that could cause a
10 default in this lease, are matters in which the lessee has
11 failed to carry something out; like pay the rent?

12 A Yes.

13 Q Now, is there anything in that paragraph or, in fact,
14 any other component of the agreement that says that the
15 railroad can terminate it for their own convenience or for the
16 use of the reuse -- renewed use of the track?

17 A The default provisions were with the lessee in the
18 negotiations with TORCH.

19 Q And the agreement, of course, serves as the proof of
20 those negotiations, correct?

21 A I'm sorry.

22 Q This agreement is the product of your negotiations?

23 A Correct.

24 Q And if you don't mind flipping to the very last page
25 of that document, Plaintiff's 8, the very last page, page 587.

1 MR. GORDON: Judge, I do have it in the Court record
2 already. May I tender into evidence at this hearing the Court
3 document that is already a part of the record?

4 THE COURT: Sure. Make sure it's identified.

5 MR. GORDON: And I believe that the witness has just
6 identified the agreement as being the one between the parties.
7 If you look at the signature pages.

8 THE COURT: What is its designation in the record
9 though? What's the document number?

10 MR. GORDON: I believe, and let me check, I believe
11 it's 14-1. Yes. In the record it appears as 14-1 in its
12 entirety.

13 THE COURT: It's admitted.

14 MR. GORDON: Thank you.

15 BY MR. GORDON:

16 Q Now, if you'll flip to the very last page of that
17 agreement you should find a diagram or a map. Does that
18 drawing show the property that was leased to TORCH of Hartwell,
19 Inc.?

20 A Yes.

21 Q And does that include the railroads right-of-way from
22 the Depot or actually from Forest Avenue all the way to Athens
23 Street?

24 A Yes.

25 Q And does it include the specific right-of-way that

1 bisects the church property, which on this diagram has a
2 number of 132 on it?

3 A Yes.

4 Q It even shows the leased area to be across Webb
5 Street, doesn't it?

6 A Yes.

7 Q Even though the tracks have been removed.

8 A (No response).

9 Q Now, can you point to anything in the agreement or
10 even anything in your recollection, for that matter --
11 especially anything in the agreement -- where the railroad
12 reserved the right to reopen this area for commercial
13 traffic?

14 A The discussions in instigating this lease were to be
15 a friendly endeavor with the City of Hartwell, the TORCH
16 personnel, with -- and no implied but understood in general
17 discussions, that the future of the railroad could
18 reinvigorate a discussion further into the operations of the
19 railroad.

20 Q And I appreciate your earlier comment when you were
21 being directly examined that the railroad entered into the
22 agreement to accommodate local officials and build goodwill.

23 A That's correct.

24 Q Now was there any other motivation entered into the
25 agreement?

1 A Preservation of the railroad right-of-way.

2 Q Would the payment of \$335,000 be a motivation as
3 well?

4 A It was a long-term lease.

5 Q And is that the amount that the TORCH group has
6 guaranteed to pay the railway over the course of the lease?

7 A That's correct.

8 Q That's yes?

9 A Yes.

10 Q Thank you. Now, let me just ask you one more time --
11 and I don't want to prolong it and you said that you had some
12 discussions or there was some implication -- but is there
13 anything at all in the agreement where the railroad retains the
14 right to continue to use the leased track for commercial
15 railroad operations?

16 A No.

17 Q Thank you. I appreciate your candor. In fact, did
18 you understand, too, that the TORCH group had a plan to remove
19 the rails and replace them with some type of light or fake
20 rail?

21 A No.

22 Q You weren't a part of that discussion. Thank you.

23 MR. GORDON: That's all I have of this witness.

24 MR. WILLIAMS: Very small redirect, Your Honor.

25 THE COURT: All right. Mr. Williams?

1 Q On whose property does this document show the
2 runaround track to be on?

3 A It's showing in the rear corridor.

4 Q And specifically it's not shown on the church
5 property; is that right?

6 A That's correct.

7 MR. WILLIAMS: That's all the redirect, Your Honor.
8 Thank you.

9 MR. GORDON: Just one other question.

10 RECROSS EXAMINATION

11 BY MR. GORDON:

12 Q Mr. Bishop, if the spur track did not appear within
13 the right-of-way belonging to the railroad on the 1916 val map
14 wouldn't that mean that the railroad would have had to have
15 acquired additional right-of-way?

16 A To the best of my memory that spur track was extended
17 subsequent to another agreement east of Webb Street which
18 required another industry and that track was extended across
19 Webb Street to service that at some point, I believe in the
20 '20s. This val map is 1916 -- if my memory -- 17, somewhere
21 in there. And it reflected what was in place at that point.
22 Subsequent to that, when the track was extended across Webb
23 Street, it was extended to accommodate another customer
24 utilizing the spur of what went into the Clinkscales property.

25 Q Was that Gold Kist?

1 A I don't recall the name of the company, but it was on
2 the east side and north of the mainline where currently Depot
3 Street is.

4 Q Did Gold Kist go out of business in 1995?

5 A There was a -- I don't recall the name of the company
6 per se, where the corn bins were, but it was in that time.

7 Q That was Hartwell Grain and Elevator? Hartwell Grain
8 and Elevator went out of business in 1996, didn't they?

9 A I believe so. I served them. When I first started
10 we served that customer.

11 Q So the two customers that you had over in that area
12 were Gold Kist and Hartwell Grain and Elevator?

13 A At that time, yes.

14 Q Both of which went out of business in about 1996?

15 A Yes.

16 Q Do you recall any other customer that you ever
17 serviced since 1996 over that portion of the track?

18 A No, nothing other than the use of the runaround for
19 operational purposes.

20 Q Using the runaround for your cars maybe, right?

21 A Correct.

22 Q But not for any commercial traffic?

23 A Not at that time because other businesses on Depot
24 Street butted up against the right-of-way in '95.

25 MR. GORDON: Thank you.

9

HARTWELL RAILROAD COMPANY

Established 1879

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

August 5, 2009

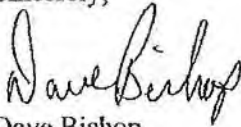
Mr. Todd Wood
Area Engineer
Georgia Department of Transportation
P. O. Box 330
Carnesville, GA 30521

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

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**

APPLICATION FOR ADVERSE ABANDONMENT

VOLUME II B

APPENDICES

(Includes Color Copies)

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Attorneys for
Hartwell First United Methodist Church

Dated: April 14, 2017

APPENDICES

Volume II A

1. Valuation Maps
2. Clinkscates Agreement
3. GRWR Trackage Rights – Federal Register Notice
4. GRWR Trackage Rights Notice of Exemption Documents
5. [Intentionally omitted.]
6. HRT / GRWR Webpages
7. HRT – Corporate Information
8. February 9, 2017 Hearing Transcript Excerpts
9. HRT letter to GaDOT re: crossing removal

Volume II B

10. Photographs of Line Segment
11. TORCH Lease
12. Aerial photographs of Hartwell First property
13. HRT letter to Hartwell First re rehabilitation
14. Hartwell First letter to HRT re rehabilitation
15. Emergency Injunction Order

10



Athens Street looking east



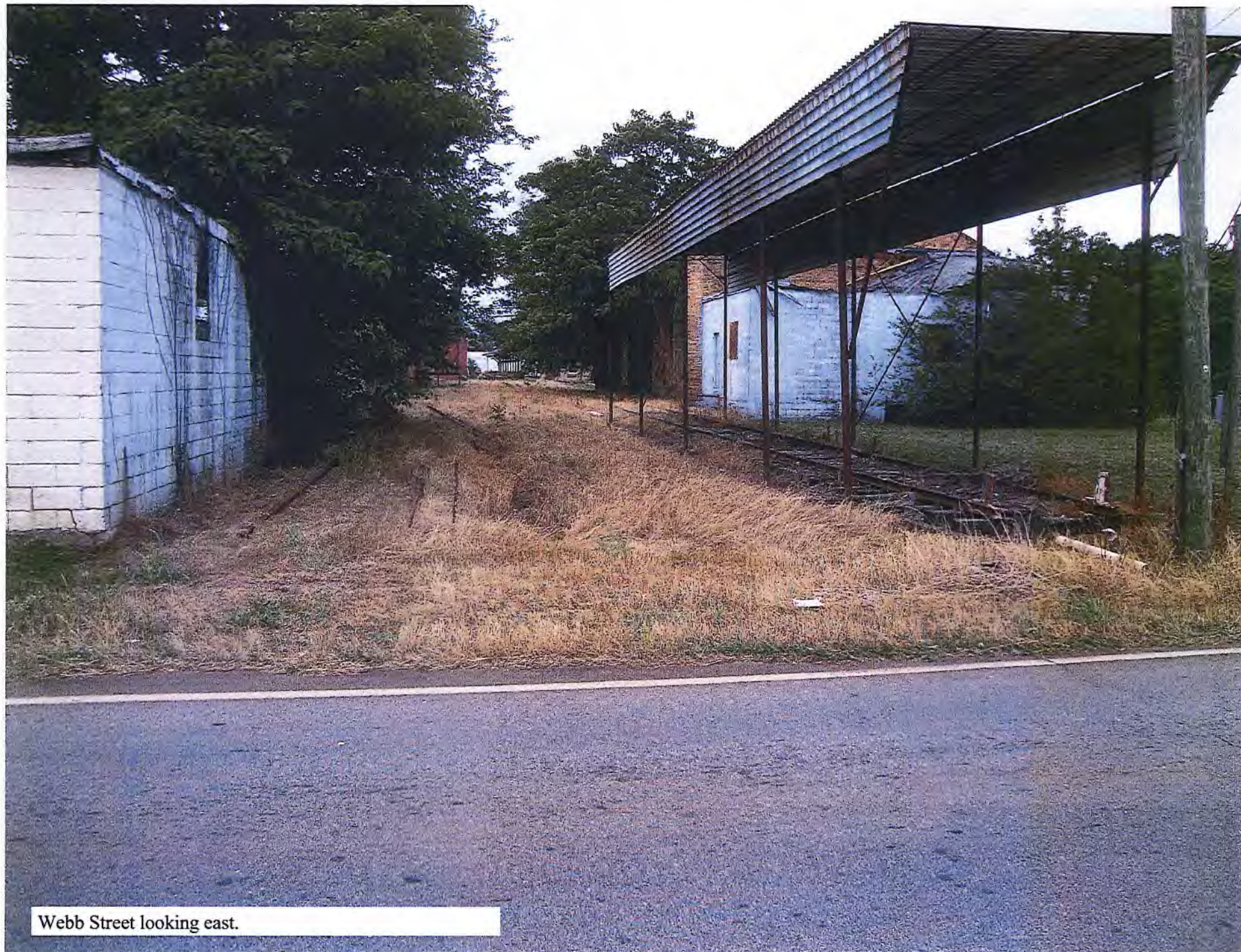




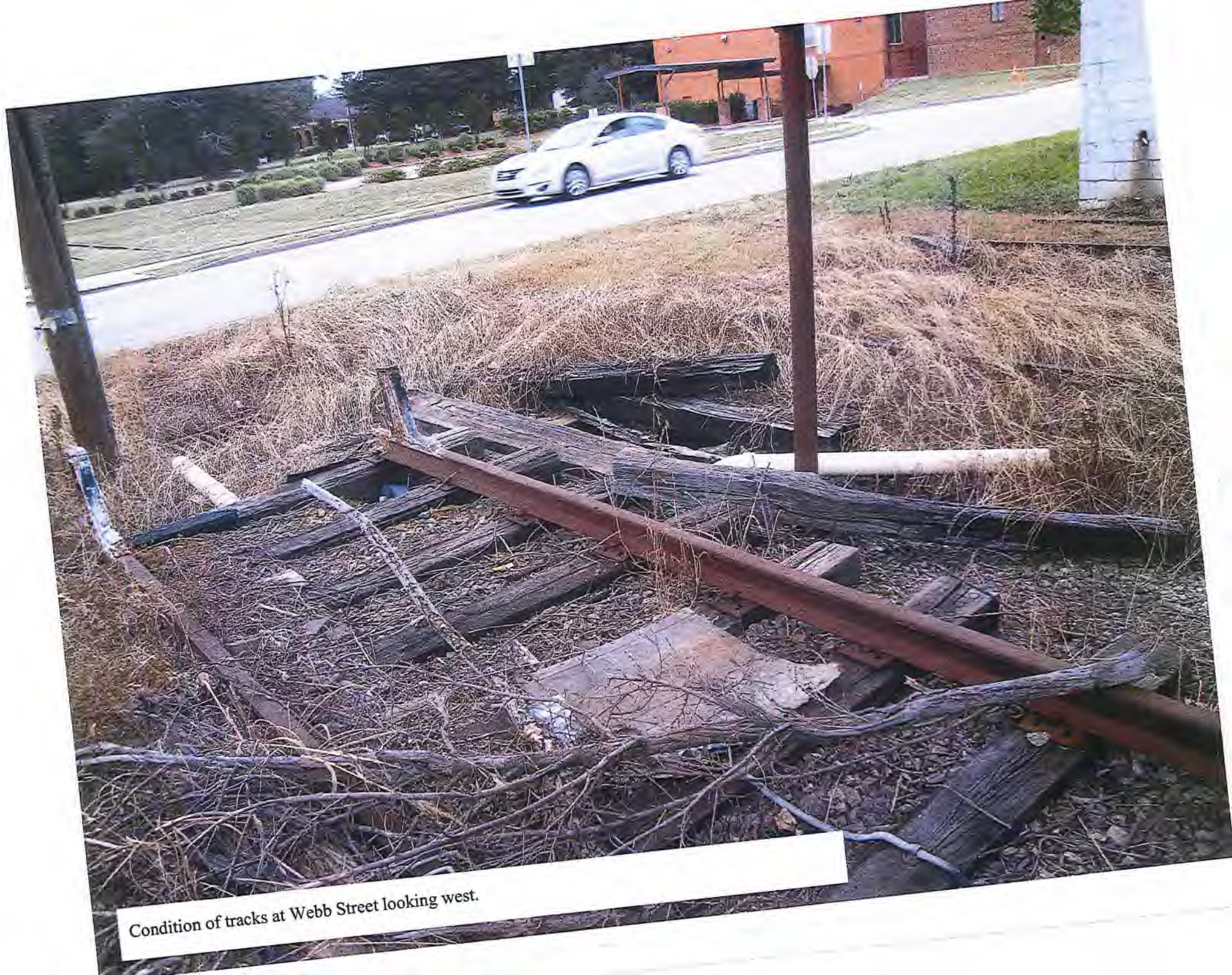
Condition of the track looking west from Bank Ave.



Main line looking east from Bank Ave.

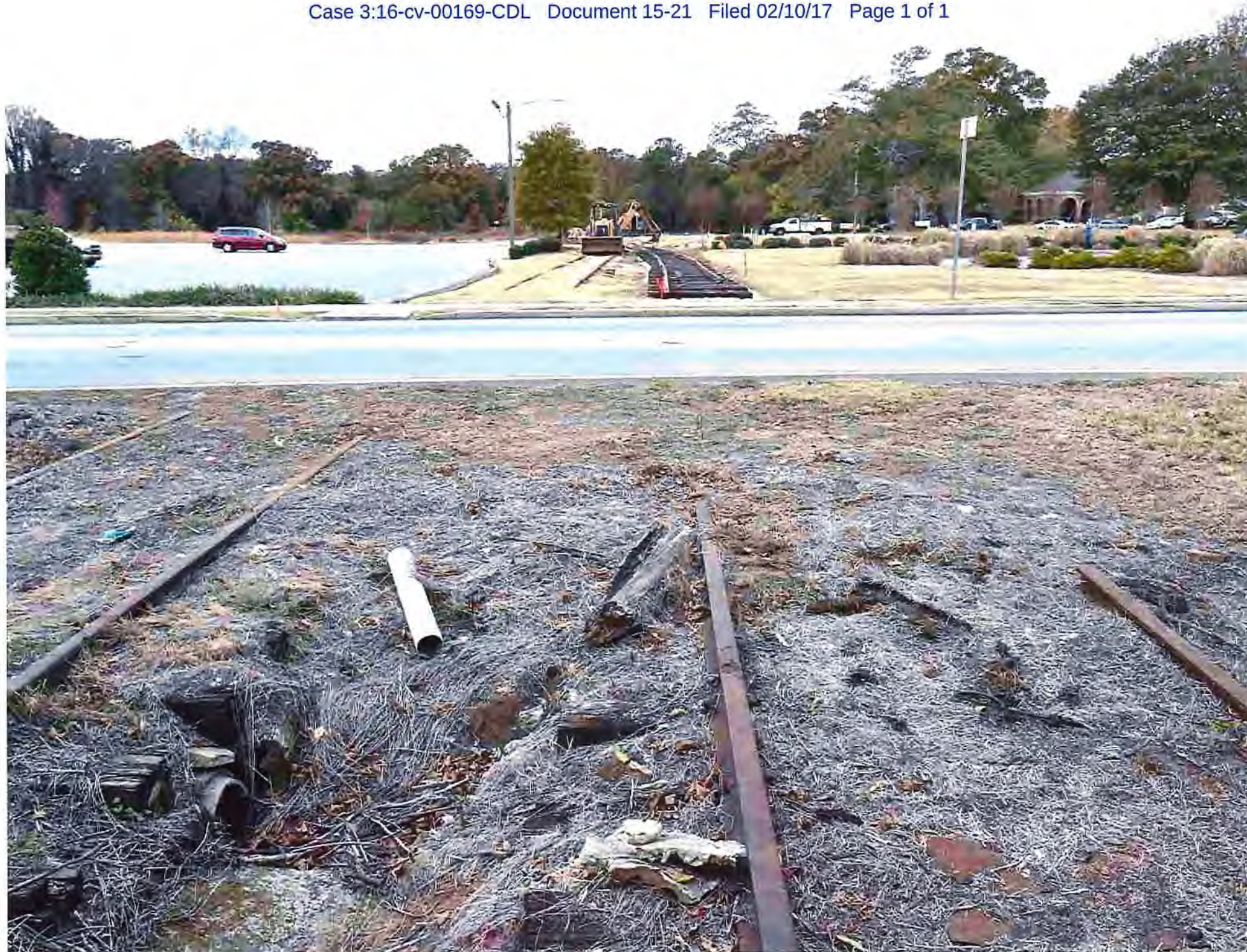


Webb Street looking east.



Condition of tracks at Webb Street looking west.







Jackson Street looking east.

11

Recorded 547-587
Book 775 Page 547-587
Date 7-6-2015
Frankie Gray, Clerk

FILED IN OFFICE
HART SUPERIOR COURT
2015 JUL -6 AM 7:19
Frankie Gray
FRANKIE GRAY, CLERK

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:

Nicki [Signature]
Unofficial Witness

Nancy L. Anderson
Notary Public, Walton County, GA

[NOTARY SEAL]

My Comm. Expires 12/12/2016



(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]

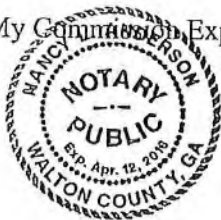
Signed, sealed and delivered in the
presence of:

Nicki Reynolds
Unofficial Witness

Nancy L. Anderson
Notary Public, Walton County, GA

[NOTARY SEAL AFFIXED]

My Commission 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:

Michelle Reynolds
Unofficial Witness
Robert L. Lee
Notary Public, Elbert County, GA

[NOTARY SEAL]

My Comm. Expires: 11/15/2016

Server Data:Rob:FULL COPY:Real Estate:T:TORCH pf Hartwell 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 111th 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 Maret, 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 111th 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)

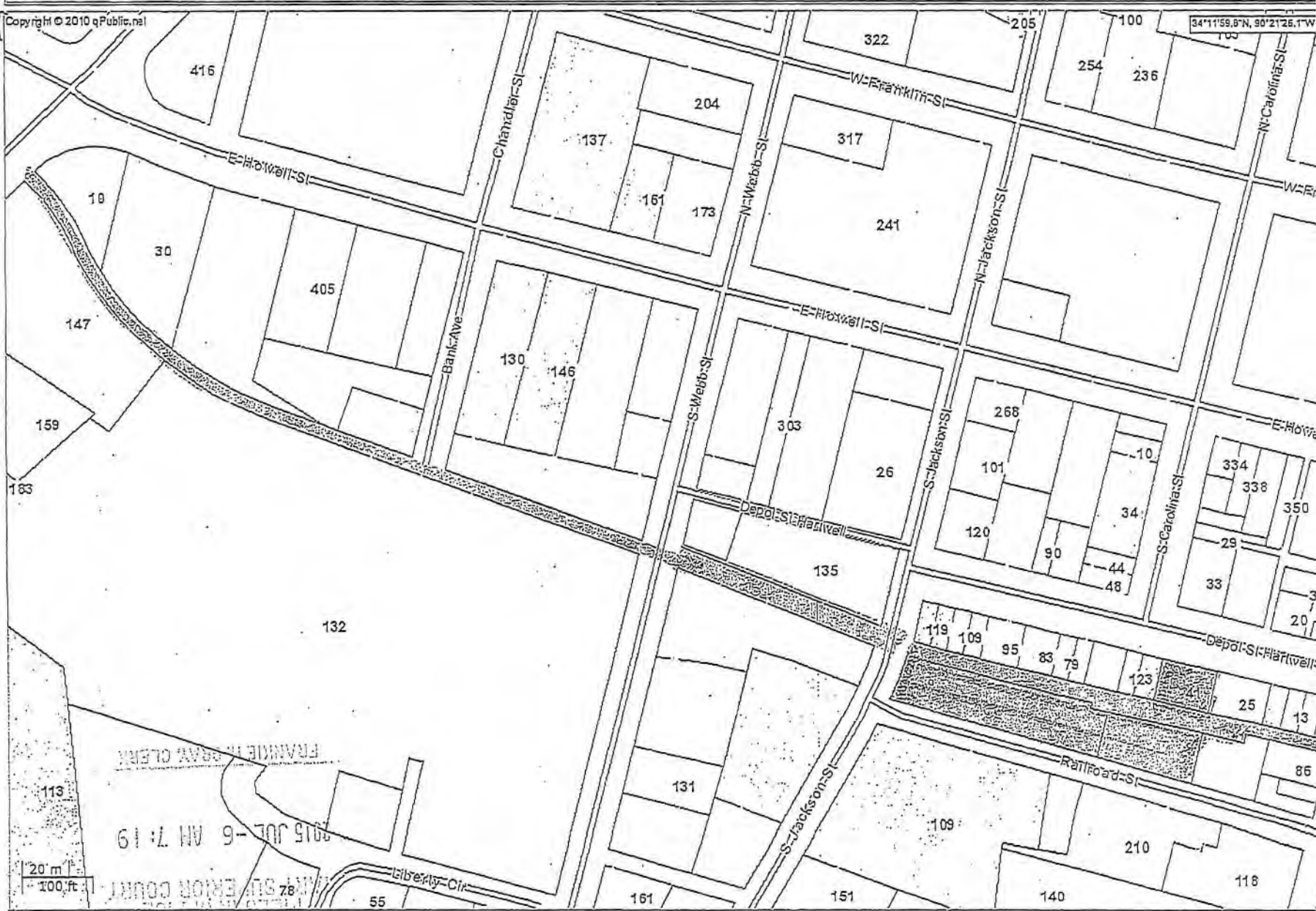


EXHIBIT A-1

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 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 0.420 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;

THENCE turning and running South $81^{\circ} 23' 55''$ East along the centerline of the right-of-way for the Hartwell Railroad for a distance of 17.88 feet to a point on the centerline of such right-of-way;

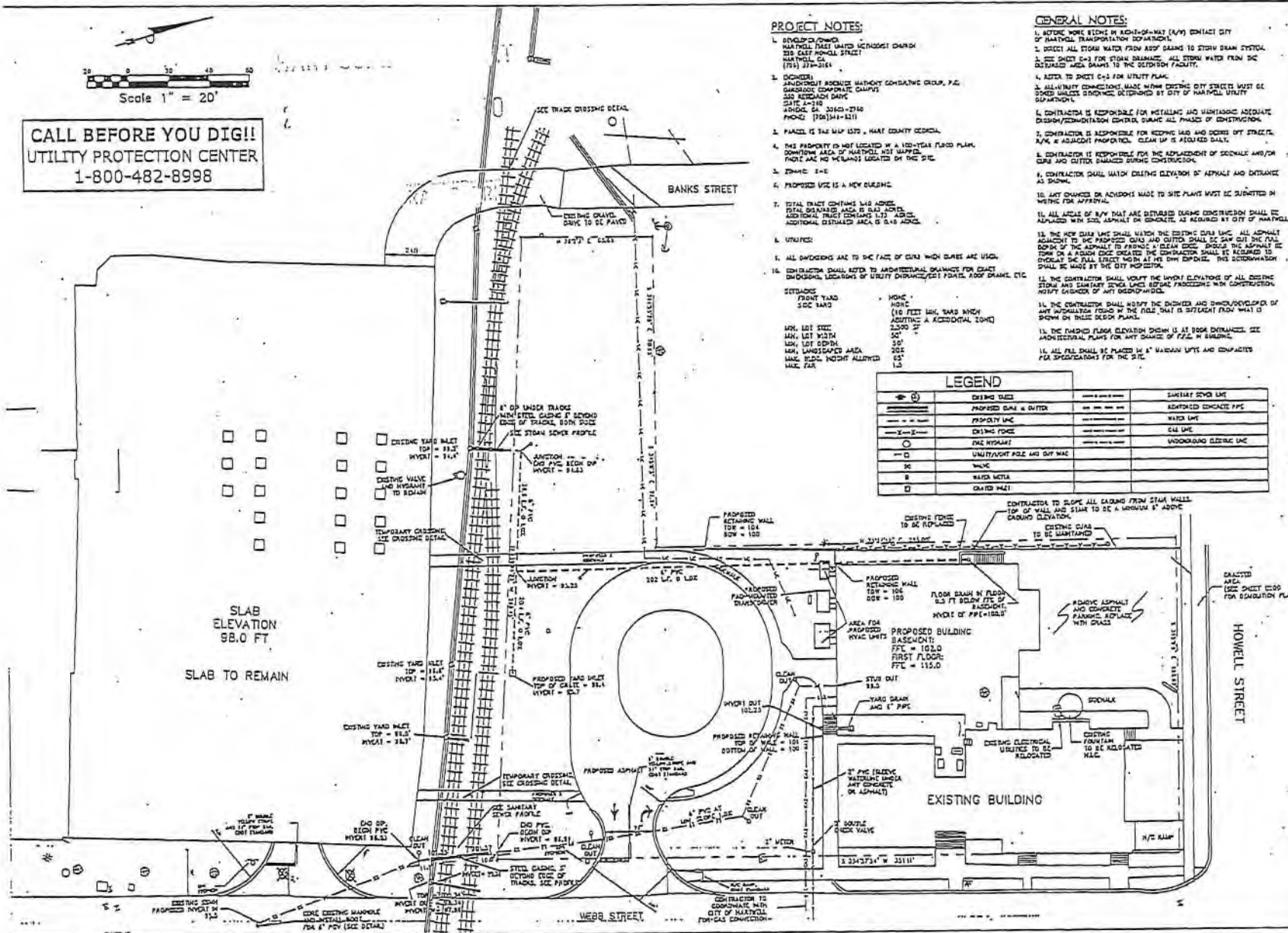
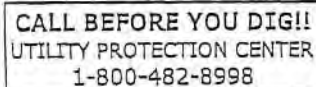
THENCE turning and running South $77^{\circ} 27' 35''$ East along the centerline of the right-of-way for the Hartwell Railroad for a distance of 69.19 feet to an iron pin set;

THENCE turning and running South $15^{\circ} 30' 55''$ West for a distance of 87.44 feet to an iron pin found on the northeastern boundary of the right-of-way (40 feet wide) for Railroad Street;

THENCE turning and running North $74^{\circ} 29' 05''$ West along the northeastern boundary of the right-of-way (40 feet wide) for Railroad Street for a distance of 251.97 feet to an iron pin set and the TRUE POINT OF BEGINNING.

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)

[illegible]

LEGEND			
	DRINKING WATER	CONCRETE OR BRICK OR STONE	INTERNAL POWER LINE
	PROPOSED GATE & GUTTER	WOOD, BRICK, BLOCK, OR CMU	EXTENDED EXISTING PIPE
	PROPERTY LINE	GLASS OR TRANSPARENT PLASTIC	WATER LINE
	DRINKING FOUNTAIN	GLASS OR TRANSPARENT PLASTIC	COLD LINE
	PIPE WORKMAN	GLASS OR TRANSPARENT PLASTIC	UNDERGROUND ELECTRIC LINE
	UNIDENTIFIED POLE AND GUY WIRE	GLASS OR TRANSPARENT PLASTIC	
	WATER		
	WATER METER		
	GRAVEL AREA		

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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LAURENT ROBERT MATHIEU

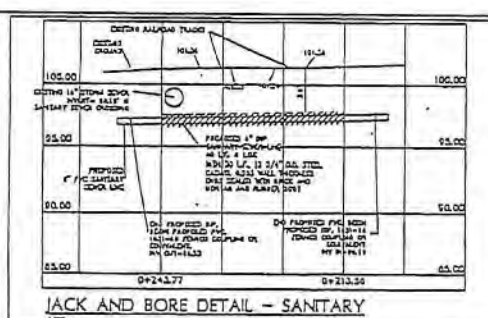


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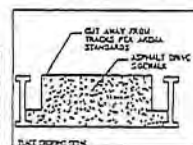
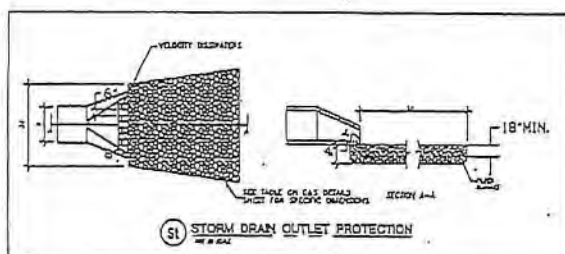
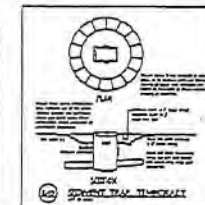
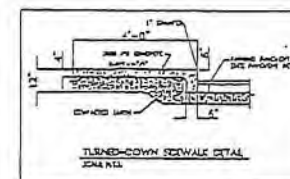
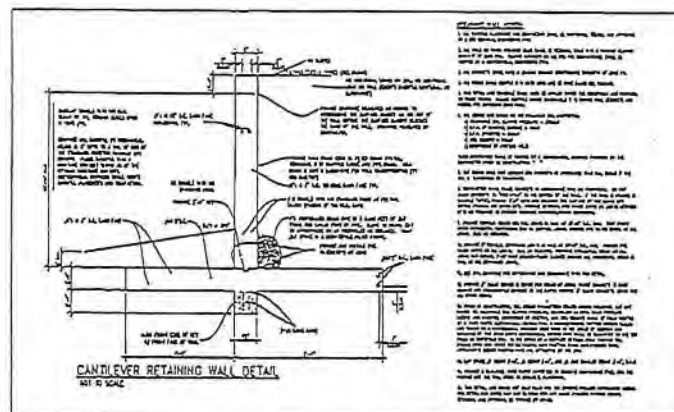
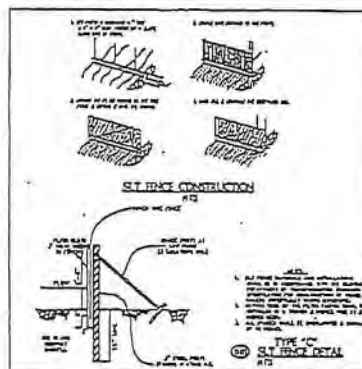
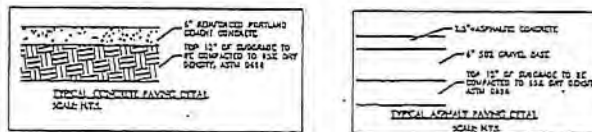
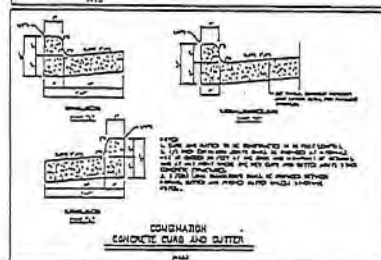
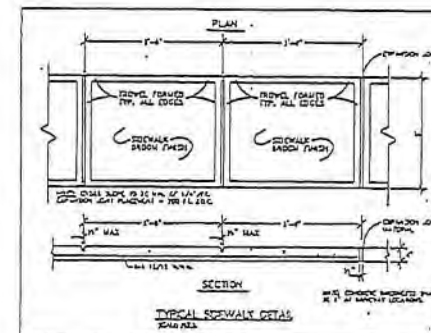
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ARTWELL FIRST UNITED METHODIST CHURCH
220 EAST HOWELL STREET
ARTWELL, GEORGIA

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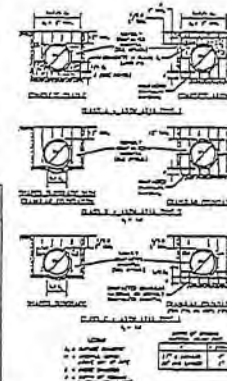
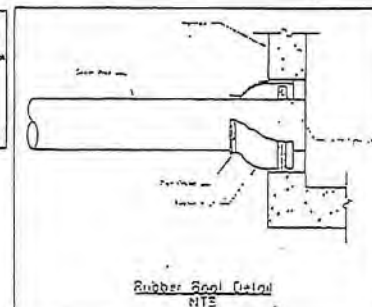
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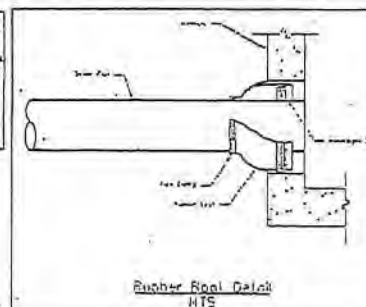
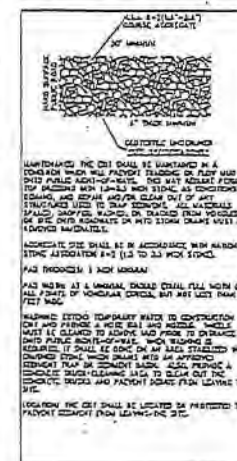
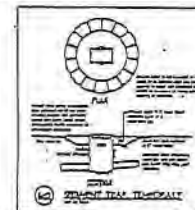
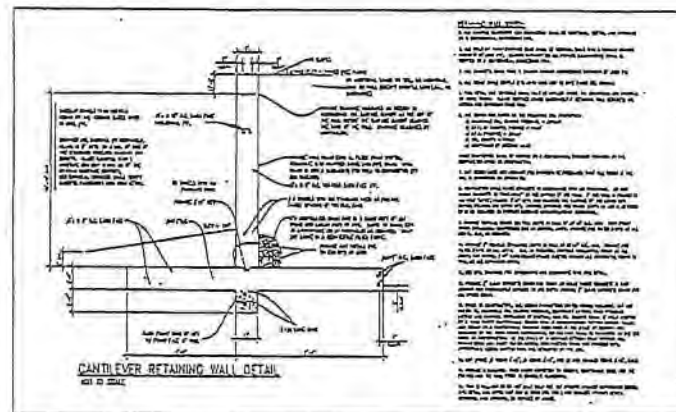
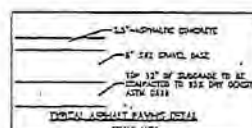
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1-800-482-8998



Outlet Protection Sizing:
 $d = 15"$
 $3d = 45"$
 $L_o = 9'$
 $W = 12.75"$
 $d_{50 \text{ Riprap}} = 3"$

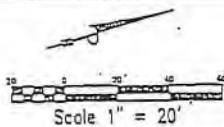
[illegible]

CRASHED STONE CONSTRUCTION, ETC.



ELATED STONE CO-OPERATION, INC.

C30 R 12	PROJECT 00001	JAN 2007
HARTWILL FIRST UNITED METHODIST CHURCH 220 EAST STREET FIRST TRAVEL EAST		



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PROJECT NOTES:

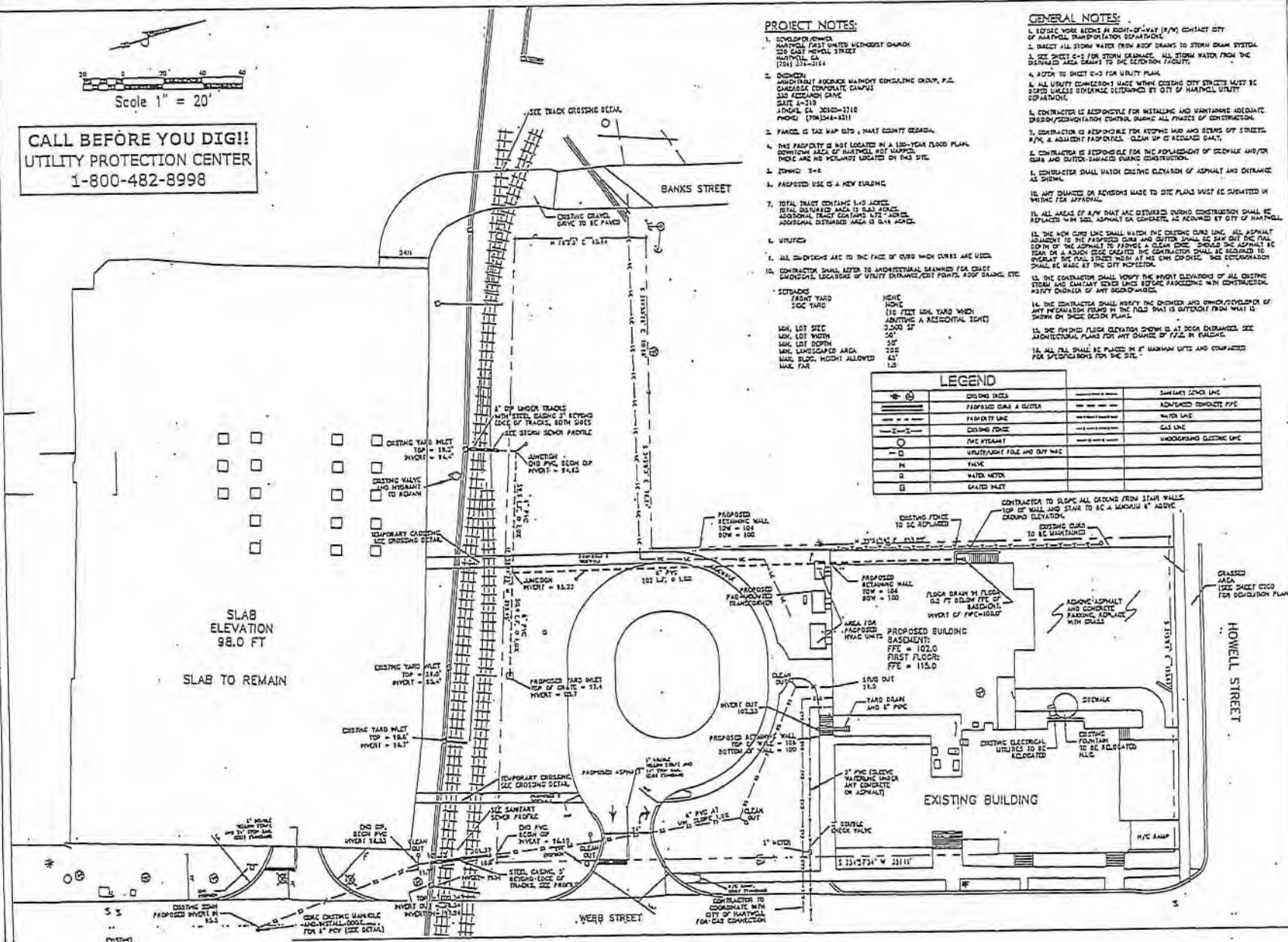
1. DEVELOPER/OWNER: HANFORD FIRST UNITED METHODIST CHURCH, 330 EAST HOWELL STREET, HANFORD, CA 93231-3714
2. DESIGNER: JACOBSON ASSOCIATES, 330 E. 1ST ST., SUITE 100, HANFORD, CA 93231-3714, PHONE: (709) 544-8211
3. PERMITS: THE MAP 020, HANFORD COUNTY, CALIF.
4. THIS PROJECT IS NOT LOCATED IN A 100-YEAR FLOOD PLAIN. HOWEVER, A 100-YEAR FLOOD PLAIN MAY BE LOCATED ON THIS SITE.
5. ZONING: 3-1
6. PROPOSED USE OF A NEW BUILDING
7. TOTAL TRACT CONTAINS 1.0 ACRES. TOTAL IMPROVED AREA IS 0.43 ACRES. ADDITIONAL TRACT CONTAINS 0.57 ACRES. ADDITIONAL IMPROVED AREA IS 0.14 ACRES.
8. UTILITIES
9. ALL UTILITIES ARE TO THE FACE OF CURB WHEN DUNES ARE USED.
10. CONTRACTOR SHALL REFER TO ARCHITECTURAL DRAWINGS FOR EXISTING UTILITIES, LOCATIONS OF UTILITY ENTRANCE/EXIT POINTS, ROOF DRAIN, ETC.
11. SETBACKS: FRONT YARD: 100' SIDE YARD: 10' REAR YARD: 10' (SEE CITY OF HANFORD ORDINANCE 11.02.01) (SEE CITY OF HANFORD ORDINANCE 11.02.01)
12. LOT SIZE: 102' LOT WIDTH: 102' LOT DEPTH: 102' LOT AREA: 10,404 SQ. FT. (SEE CITY OF HANFORD ORDINANCE 11.02.01)
13. MAX. BUILDING HEIGHT: 10' (SEE CITY OF HANFORD ORDINANCE 11.02.01)
14. MAX. BUILDING AREA: 10,404 SQ. FT. (SEE CITY OF HANFORD ORDINANCE 11.02.01)
15. MAX. BUILDING HEIGHT: 10' (SEE CITY OF HANFORD ORDINANCE 11.02.01)
16. MAX. BUILDING AREA: 10,404 SQ. FT. (SEE CITY OF HANFORD ORDINANCE 11.02.01)

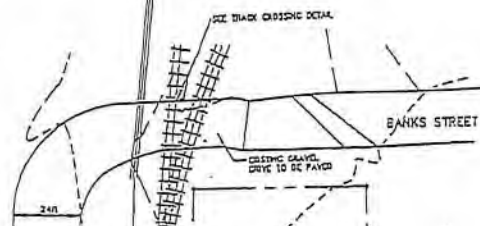
GENERAL NOTES:

1. ALL UTILITIES SHALL BE DEEPER THAN THE CITY OF HANFORD SPECIFICATIONS.
2. ALL UTILITIES SHALL BE DEEPER THAN THE CITY OF HANFORD SPECIFICATIONS.
3. ALL UTILITIES SHALL BE DEEPER THAN THE CITY OF HANFORD SPECIFICATIONS.
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15. ALL UTILITIES SHALL BE DEEPER THAN THE CITY OF HANFORD SPECIFICATIONS.
16. ALL UTILITIES SHALL BE DEEPER THAN THE CITY OF HANFORD SPECIFICATIONS.

LEGEND

EXISTING DRAIN	PROPOSED DRAIN	SHOWN ON SITE
PROPOSED DRAIN	PROPOSED DRAIN	SHOWN ON SITE
PROPOSED DRAIN	PROPOSED DRAIN	SHOWN ON SITE
PROPOSED DRAIN	PROPOSED DRAIN	SHOWN ON SITE
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PROPOSED DRAIN	PROPOSED DRAIN	SHOWN ON SITE
PROPOSED DRAIN	PROPOSED DRAIN	SHOWN ON SITE
PROPOSED DRAIN	PROPOSED DRAIN	SHOWN ON SITE





1. EROSION & SEDIMENT CONTROL MEASURES SHALL BE ESTABLISHED PRIOR TO ANY OTHER CONSTRUCTION ACTIVITIES ON SITE. ALL EROSION & SEDIMENT CONTROL MEASURES SHALL BE MAINTAINED UNTIL PERMANENT GROUND COVER IS ESTABLISHED.

1. ROTATE WORK BEAMS IN RIGHT-OF-WAY (R/W) CONTACT CITY OF HUNTSVILLE TRANSPORTATION DEPARTMENT.
2. DIRECT ALL STORM WATER FROM ROOF DRAIN TO STORM DRAIN STREET.
3. ALL STORM WATER FROM THE DISTURBED AREA DRAINS TO CITY STORM SEWER STREET.

4. ADD TO SHEET C-1 FOR UTILITY PLAN.

3. ALL UTILITY CONNECTIONS MADE WITHIN CITY STREETS MUST BE
BORDED UNLESS OTHERWISE DETERMINED BY MAAT COUNTY UTILITY
DEPARTMENT.

4. ANY STREET CUTS EXPOSED A CITY STANDARD FAVORITE PATCH
SYSTEM AND STREET CLOSURE CONTACT CITY OF MAATROLL.

7. CONTRACTOR IS RESPONSIBLE FOR INSTALLING AND MAINTAINING ADEQUATE DRAINAGE/SEWERIZATION CONTROL DURING ALL PHASES OF CONSTRUCTION.

8. CONTRACTOR IS RESPONSIBLE FOR KEEPING LANE AND CURBS OFF STREETS, A/V, & ADJACENT PROPERTIES. CLEAN UP IS REQUIRED DAILY.

9. CONTRACTOR IS RESPONSIBLE FOR THE REPLACEMENT OF SIDEWALK AND/OR CURB AND BUTTER DAMAGED DURING CONSTRUCTION.

10. CONTRACTOR SHALL MATCH EXISTING ELEVATION OF ASPHALT AND DETRAIN AS SHOWN.

14. ANY CHANGES OR ACTIONS MADE TO SITE PLANS MUST BE SUBMITTED IN WRITING FOR APPROVAL.

15. ALL AREAS OF R/W THAT ARE DISTURBED DURING CONSTRUCTION SHALL BE REVEGETED WITH SITE ADJUSTED OR EQUIVALENT, AS REQUIRED BY CITY OF MARTIN.

12. THE WORK CURBS LINE SHALL MATCH THE EXISTING CURBS LINE. ALL ACTUAL ADJUSTMENT TO THE PROPOSED CURBS AND GUTTER SHALL BE SAW CUT THE FULL WIDTH OF THE ACTUAL TO PROVIDE A CLEAN EDGE.

14. THE CONTRACTOR SHALL VERIFY THE INVERT ELEVATIONS OF ALL EXISTING STORM AND SANITARY SEWER LINES BEFORE PROCEEDING WITH CONSTRUCTION. NOTIFY OWNER OF ANY DISCREPANCIES.

12. THE CONTRACTOR SHALL KEEP THE OWNER AND OWNER/DEVELOPER OF ANY INFORMATION BEING IN THE FIELD THAT IS DIFFERENT FROM WHAT IS SHOWN ON THESE DESIGN PLANS.

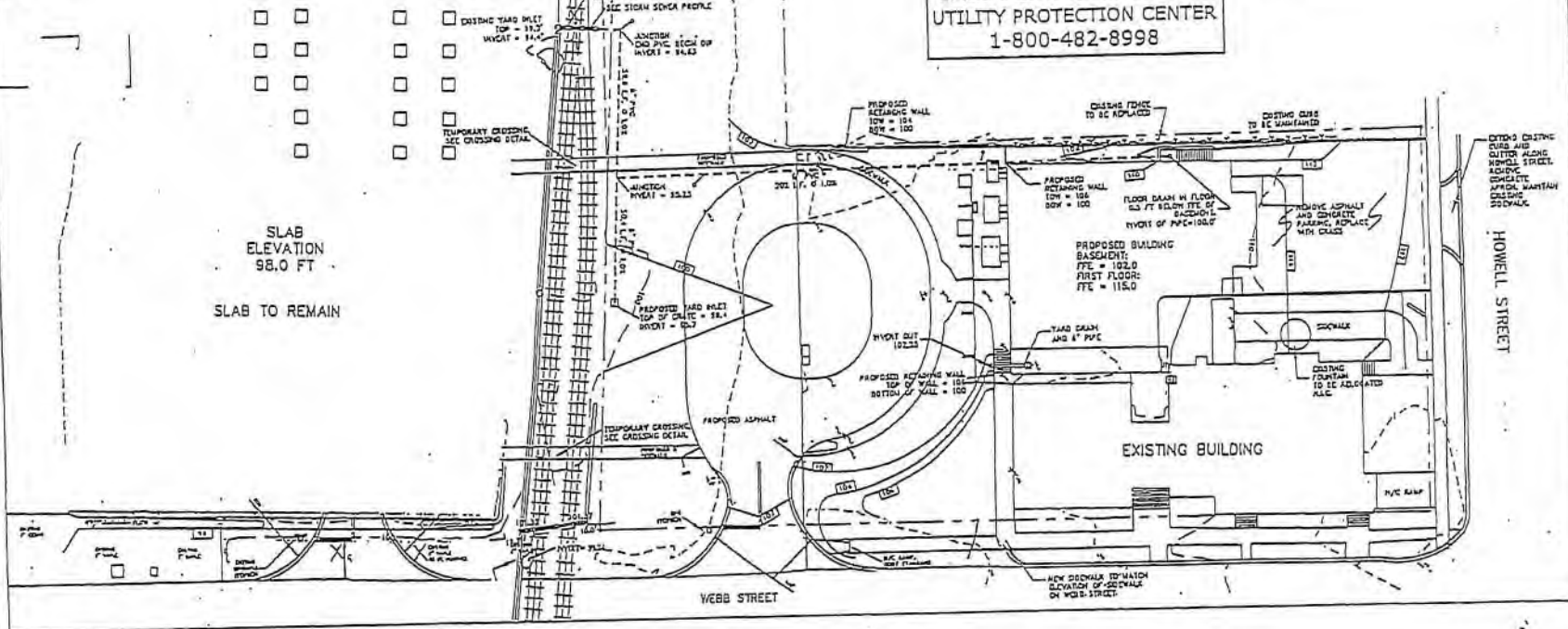
13. THE FINISHED FLOOR ELEVATION SHOWN IS AT DOOR THRESHOLD. SEE

17. ALL FILL SHALL BE PLACED IN 8" MAXIMUM LIFTS AND COMPACTED FOR SPECIFICATIONS FOR THE SITE.

For a complete list of references, see the end of the article.

LEGEND	
	CRIMINAL RECORD
	PROPERTY LINE
	CRIMINAL CONTAINMENT (MAY)
	CRIMINAL CONTAINMENT (MAY)
	CRIMINAL CONTAINMENT (MAY)
	PROPERTY LINE
	PROPERTY LINE (CRIMINAL RECORD)
	CRIMINAL RECORD
	CRIMINAL RECORD
	CRIMINAL RECORD

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DECEMBER 14, 2007

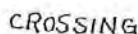


EXHIBIT C

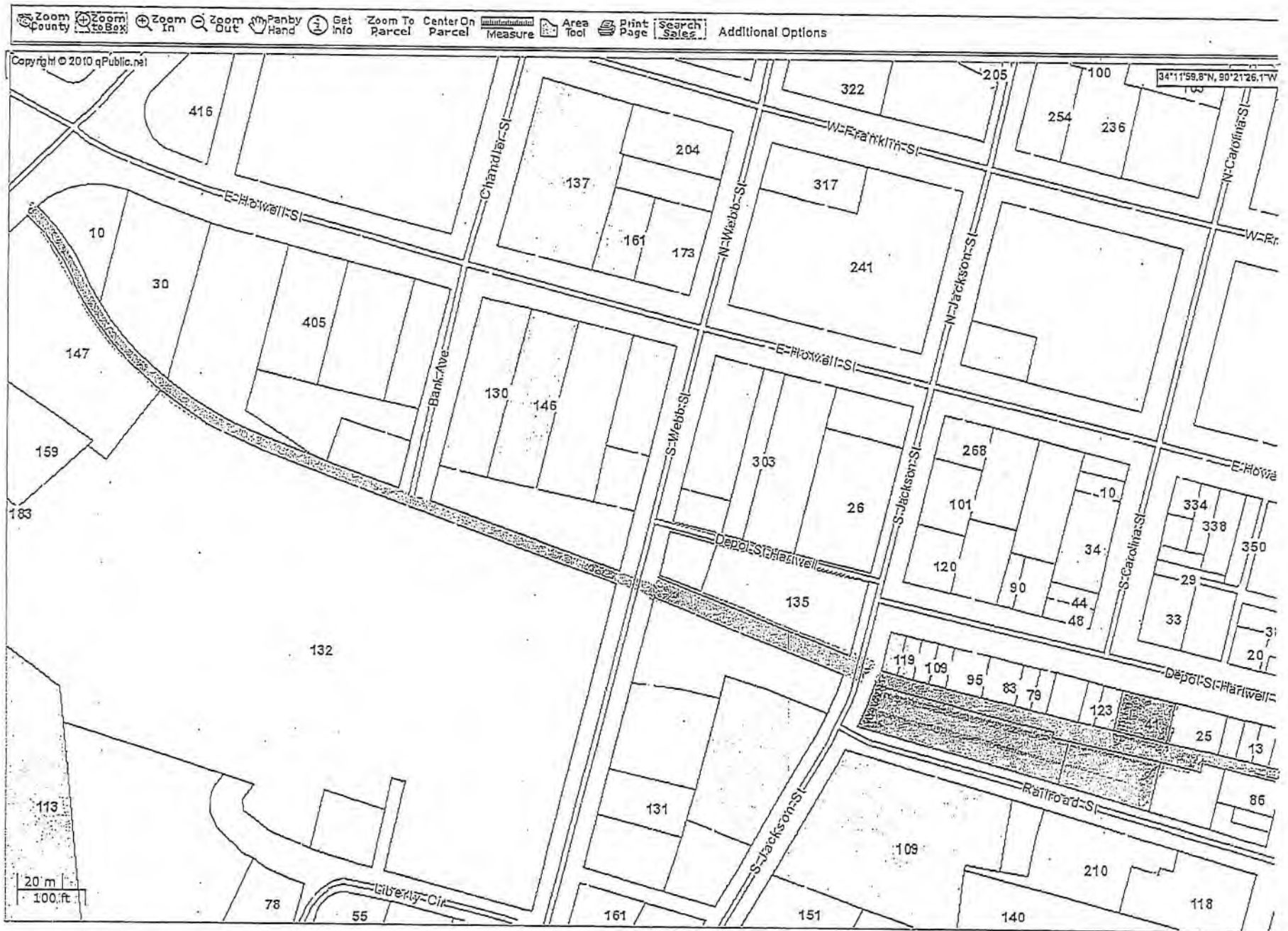


EXHIBIT A-1

12



Document 15-6 Filed 03/24/20 Page 10 of 10

Imagery Date: 11/20/2014 39°21'38"N 82°56'15"W elev: 809 ft. 0.5m



Google Earth

Imagery Date: 11/20/2014 34°21'14"N 85°56'05"W elev 813 ft eye alt 2

13

HARTWELL RAILROAD COMPANY

Established 1879

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

August 24, 2016

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

Mr. Joe Whittemore:

On July 31, 2008, the Hartwell First United Methodist Church (Licensee) and the Hartwell Railroad Company (Railroad) signed an agreement that would allow Licensee to have use of two private sidewalk crossings and an at-grade crossing (the Agreement).

Railroad has determined that it is necessary to rehabilitate its tracks that are the subject of the Agreement. Rehabilitation will require that the tracks in question be returned to operating condition. In addition, it will necessitate the clearing of all materials that would adversely impact safe rail operations over the two private sidewalk crossings and the at-grade crossing.

At this time, Railroad has determined that it will not seek to exercise its rights of closure pursuant to the provisions of paragraph 14 of the Agreement. Furthermore, Railroad will not request Licensee to restore Railroad's right of way or property to the condition existing prior to the construction of said crossings at Licensee's sole cost and expense consistent with the provisions of paragraph 14. Instead, in this one instance, Railroad will waive such provisions and will bear the cost of restoring the right-of-way to its prior condition and permit Licensee to continue its use of the crossings consistent with the provisions of the Agreement.

For the safety of all concerned, Railroad requests Licensee to comply fully with the provisions and requirements of paragraph 3. Those requirements include

construction and maintenance of all necessary signage that will alert Licensee's agents, employees, patrons and invitees that the tracks are part of an operating railroad and that due care must be exercised when using the crossing for the private purposes of the Licensee.

Please be advised that rehabilitation of the rail line within the vicinity of the three crossings in question shall commence immediately without further notice.

Sincerely,

A handwritten signature in black ink, appearing to read "BR Anderson". The signature is written in a cursive, flowing style.

B.R. Anderson
President

Hartwell Railroad Company

P. O. Box 429
Hartwell, GA 30643

CERTIFIED MAIL



7015 3010 0000 4100 8514



1000



30643

U.S. POSTAGE
PAID
LAVONIA, GA
30553
AUG 26, 1986
AMOUNT

\$6.47

R2305K140360-15

NAME _____

1st Notice _____

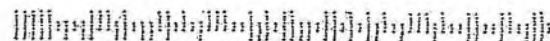
2nd Notice _____

Return _____

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

Attention: Mr. Joe Whittemore

3064387218 0001



14

The First United Methodist Church

200 E. Howell Street
Hartwell, Georgia 30643

September 13, 2016

B. R. Anderson, President
Hartwell Railroad Company
P. O. Box 429
Hartwell, Georgia 30643

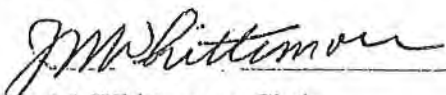
Re: Your 8/24 notification letter

Dear B. R.,

We are somewhat perplexed by your August 24 letter. We have been told that TORCH now leases the railroad property from Athens Street to S. Forest Avenue for their "Railroad Street Park" project – a use inconsistent with your proposed reinstitution of rail operations. Moreover, it appears that only the Church has been notified of your rehabilitation plans, and not the City or State which would need to be involved with any necessary rehabilitation of tracks where they cross Athens, Banks and Webb Streets, or TORCH. We can only surmise that your letter was sent in response to the Church's proposed adverse abandonment proceeding. As you know, the STB has given us the necessary waivers for us to proceed, and we intend to continue to do so. Any work that you choose to make to the rail line is at your own risk.

That being said, we acknowledge that we have responsibilities under the license agreement, and appreciate the advance notice you have provided of the work you propose to do. We do not believe that there are any Church materials at either of the crossing locations. Rather than erecting permanent signs at this time since the rail line is not currently operating and can't be until the line is rehabilitated, the Church will place temporary construction notices when you are doing the work, and will have Church members placed at crossings at times when our parishioners and guests, and children will be using the crossings associated with Church programs during construction. Although you have indicated that construction could begin at any time, we appreciate your giving us one – two days' notice before any work is done in the right of way through the Church's property.

Best regards,



Joe M. Whittemore, Chair
Land Use and Planning Task Force

Cc: Eric M Hocky, Clark Hill, PLC

Dr. R. Allen Stewart
Senior Pastor

CHURCH OFFICE – (706) 376-3164

15

FILED IN Hart COUNTY
THIS 28 DAY OF November 2016
AT 4:15 PM/PA

IN THE SUPERIOR COURT OF HARTWELL
STATE OF GEORGIA
NORTHERN JUDICIAL CIRCUIT

HARTWELL FIRST UNITED
METHODIST CHURCH, INC.

Plaintiff,

v.

HARTWELL RAILROAD COMPANY,
F/K/A HARTWELL RAILWAY, AND
GREAT WALTON RAILROAD
COMPANY,

Defendants.

CIVIL ACTION NO. 16HV00611M

ORDER GRANTING
EMERGENCY INJUNCTION

This matter came before the Court for a hearing on Plaintiff's request for an emergency injunction to temporarily stop work by Hartwell Railroad Company on disputed property in the City of Hartwell, Georgia. Sufficient notice was provided to Defendants' counsel informing him of the time and place of the hearing and Defense counsel was present at said hearing.

The Court reviewed Plaintiff's Petition and Exhibits and took sworn testimony from Joe Whittemore on behalf of the Church. Defendants offered no testimony, but did introduce four (4) photographs.

Based on the evidence and testimony presented, the Court enters the following findings of fact:

- 1.) The Defendants acts pose a substantial threat of irreparable injury to Plaintiff's property and of continuing trespass. The injury is of a continuing nature for which no legal remedy is sufficient.
- 2.) There is a substantial likelihood that Plaintiff's will prevail at trial.

3.) In balancing the interests of the parties, there was no evidence presented showing harm to Defendants if an emergency Order is granted.

4.) Accordingly, it is hereby ordered and adjudged that the Defendants, Hartwell Railroad Company and Great Walton Railroad Company, their employees and agents, are thereby restrained and enjoined from conducting any work outside of the 20 foot right of way between Bank Street and Webb Street in the City of Hartwell. This 20 foot right of way is shown on the railroad map dated June 30, 1916 and was marked on the ground by multiple red survey stakes placed by Georgia Registered Surveyor, Slate Bauknight on November 24, 2016.

IT IS FURTHER ORDERED, that counsel for the parties shall confer with each other to seek to come to an agreement as to a timeframe for briefs to be submitted to the Court on the issues raised at the hearing. If counsel can agree on said timeframe, the Court shall be notified of same and briefs shall be submitted within said timeframe. If counsel cannot agree, each shall submit their proposed timeframe to the Court and the Court shall issue a directive as to when briefs should be submitted.

This injunction will remain effective until further order of this Court.

A copy of this order has been e-mailed to counsel for both parties.

SO ORDERED this 28th day of November, 2016.


JEFFERY S. MALCOM, JUDGE
SUPERIOR COURT NORTHERN JUDICIAL CIRCUIT