



KAPLAN KIRSCH ROCKWELL

242651

February 16, 2017

ENTERED
Office of Proceedings
February 16, 2017
Part of
Public Record

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

Re: *The Atlanta Development Authority D/B/A Invest Atlanta and Atlanta BeltLine, Inc. –
Verified Petition for a Declaratory Order*, Finance Docket No. 35991

Dear Ms. Brown:

I am enclosing for filing in the above-captioned proceeding the Third Supplement to the Verified Petition for a Declaratory Order of The Atlanta Development Authority, d/b/a Invest Atlanta, and Atlanta BeltLine, Inc., in accordance with the Board's December 15, 2016 Order.

Please do not hesitate to contact me if you have any questions. Thank you very much for your assistance in this matter.

Sincerely,



Allison I. Fultz

*Counsel for The Atlanta Development Authority
and Atlanta BeltLine, Inc.*

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35991

**THE ATLANTA DEVELOPMENT AUTHORITY
D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.**

**THIRD SUPPLEMENT TO THE
VERIFIED PETITION FOR A DECLARATORY ORDER**

Communications with respect to this document should be addressed to:

Charles A. Spitulnik
Allison I. Fultz
Steven L. Osit
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW, Suite 800
Washington, DC 20036
(202) 955-5600

Email: cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com
sosit@kaplankirsch.com

*Counsel for The Atlanta Development
Authority d/b/a Invest Atlanta and
Atlanta BeltLine, Inc.*

Dated: February 16, 2017

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35991

**THE ATLANTA DEVELOPMENT AUTHORITY
D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.**

**THIRD SUPPLEMENT TO THE
VERIFIED PETITION FOR A DECLARATORY ORDER**

The Atlanta Development Authority, d/b/a Invest Atlanta (“The Authority”), Atlanta BeltLine, Inc. (“ABI”) file this Third Supplement to the Verified Petition for a Declaratory Order in accordance with the Board’s directive to amend the controlling deed between Norfolk Southern Railway Company (“NSR”) and The Authority for the Southern Segment of the line. *See The Atlanta Development Authority D/B/A Invest Atlanta and Atlanta BeltLine, Inc.*, STB Finance Docket No. 35991, *slip op.* at 10 (Service Date Dec. 15, 2016) (the “Order”).¹

The Board’s December 15, 2016 Order found that certain conditions in the original conveyance documents between NSR and The Authority’s predecessors in interest (the “Mason Entities”) interfered with NSR’s common carrier obligation over the Southern Segment of the line. In particular, the Board identified provisions in the controlling deed that required NSR to: (i) negotiate the joint use of the easement area for passenger service at the request or consent of the Mason Entities; (ii) seek the Mason Entities’ consent before negotiating the use of the

¹ The Line consists of two segments on either side of the Montgomery Ferry Road Bridge, located in Fulton County, Georgia, at milepost 632.84: the Northern Segment (milepost 632.42 to 632.84) and the Southern Segment (milepost 632.84 to 636.56). In its Order, the Board granted The Authority’s and ABI’s Petition with respect to the Northern Segment, abutting certain residential properties along Flagler Avenue, as well as that portion of the Southern Segment that has been abandoned by NSR (between mileposts 633.10 and 636.56). *Id.* 9–10. Through this Third Supplement, The Authority and ABI request that the Board grant the Petition for a Declaratory Order with respect to the remaining portion of the Southern Segment (between mileposts 632.84 and 633.10).

easement area; and (iii) pursue abandonment or discontinuance authority at the Mason Entities' request. *Id.* at 8. Due to these conditions, the Board held that the Mason Entities' initial acquisition of the line, as well as the subsequent conveyance thereof from the Mason Entities to NE Corridor Partners and then to The Authority, required Board approval. *Id.* at 9. Accordingly, the Board directed The Authority to either seek "after-the-fact acquisition authority," or file amended documents with the Board removing these conditions. *Id.*²

The Authority, ABI, and NSR have mutually agreed to remove the above limitations on NSR's ability to provide common carrier service over the Southern Segment. The parties have executed and recorded a corrected deed, attached as **Exhibit A**, which strikes each of the three conditions enumerated above. Accordingly, The Authority's and NSR's respective rights and obligations over the Southern Segment are now *identical* to those over the Northern Segment, which the Board concluded "did comport with *State of Maine* precedent." *Id.* at 9–10.

The Authority and ABI therefore respectfully request that the Board grant their Petition for Declaratory Order with respect to the portion of the Southern Segment that has not been abandoned by the NSR. Because the limitations unique to the Southern Segment have been removed through the corrected deed, NSR now "retain[s] a permanent, exclusive easement and sufficient control to carry out its common carrier obligations over that segment." Order, *slip op.* at 10. Accordingly, the conveyance does not require the Board's retroactive approval.

² The Board initially directed The Authority to take either action within thirty days of its decision. *Id.* at 10. On January 17, 2017, the Board granted The Authority's request to extend the time for filing an amended deed to February 16, 2017. *The Atlanta Development Authority D/B/A Invest Atlanta and Atlanta BeltLine, Inc.*, STB Finance Docket No. 35991, *slip op.* at 1 (Service Date Jan. 17, 2017).

Dated: February 16, 2017



Charles A. Spitulnik

Allison I. Fultz

Steven L. Osit

Kaplan Kirsch & Rockwell LLP

1001 Connecticut Avenue, NW, Suite 800

Washington, DC 20036

(202) 955-5600

Email: cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com
sosit@kaplankirsch.com

*Counsel for The Atlanta Development
Authority d/b/a Invest Atlanta
and Atlanta BeltLine, Inc.*

EXHIBIT A

Deed of Correction

When recorded, return to:

Nina Hickson, General Counsel
Atlanta BeltLine, Inc.
100 Peachtree St NW #2300
Atlanta, GA 30303

RECEIVED

FEB 13 2018

CATHELENE ROBINSON, C.S.C.

D.C.S.C. Fulton Co., Ga.

DEED OF CORRECTION

This **DEED OF CORRECTION**, made this 9th day of February, 2017, between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation, successor to the Georgia Air Line Railway Company, the Atlanta and Richmond Air Line Railway Company, Richmond and Danville Railroad Company, the Atlanta and Charlotte Air Line Railway Company and Southern Railway Company, **Grantor**, party of the first part; and **THE ATLANTA DEVELOPMENT AUTHORITY**, a public body corporate and politic of the State of Georgia, **Grantee**, party of the second part:

WITNESSETH

WHEREAS, by Deed dated December 30, 2004, and recorded in the Office of the Clerk of Superior Court of Fulton County, Georgia, in Deed Book 39115, page 430, Grantor conveyed certain property in Fulton County, Georgia, to **ANSLEY NORTH BELTLINE, LLC**, a Georgia limited liability company, **ANSLEY SOUTH BELTLINE, LLC**, a Georgia limited liability company, **PIEDMONT BELTLINE, LLC**, a Georgia limited liability company, **NORTH AVENUE BELTLINE, LLC**, a Georgia limited liability company, **CORRIDOR BELTLINE, LLC**, a Georgia limited liability company, and **CORRIDOR EDGEWOOD, LLC**, a Georgia limited liability company, collectively, the **Developer Parties**; and

WHEREAS, Grantor reserved to itself certain Easements and Rights relating to Grantor's continued operation of freight rail service and maintenance of Grantor's ability to carry out its common carrier obligation, as contained in the Deed dated December 30, 2004, and recorded in the Office of the Clerk of Superior Court of Fulton County, Georgia, in Deed Book 39115, page 430; and

WHEREAS, Grantor and Developer Parties executed a Deed of Correction dated June 11, 2007, and recorded in the Office of the Clerk of Superior Court of Fulton County, Georgia, in Deed Book 45194, page 351 (hereafter the **First Deed of Correction**), to amend certain post conveyance obligations of Grantor and Developer Parties relating to Grantor's reserved Easements and Rights in the last paragraph of Exhibit B to the Deed dated December 30, 2004, and recorded in the Office of the Clerk of Superior Court of Fulton County, Georgia, in Deed Book 39115, page 430; and

WHEREAS, by Limited Warranty Deed dated October 31, 2007, and recorded in the Office of the Clerk of Superior Court of Fulton County, Georgia, in Deed Book 45938, page 100, Developer Parties transferred to NE Corridor Partners, LLC (hereinafter NE Corridor Partners), a Georgia limited liability company, Developer Parties' collective right, title and interest, subject to Grantor's reserved Easements and Rights, as amended by the First Deed of Correction, in all of the land described in the Deed dated December 30, 2004, and recorded in the Office of the Clerk of Superior Court of Fulton County, Georgia, in Deed Book 39115, page 430; and

WHEREAS, by Limited Warranty Deed dated October 31, 2008, and recorded in the Office of the Clerk of Superior Court of Fulton County, Georgia, in Deed Book 47320, page 557, NE Corridor Partners transferred to Grantee all of NE Corridor Partners' right, title and interest, subject to Grantor's reserved Easements and Rights, as amended by the First Deed of Correction,

in all of the land described in the Deed dated December 30, 2004, and recorded in the Office of the Clerk of Superior Court of Fulton County, Georgia, in Deed Book 39115, page 430; and

WHEREAS, Grantee and Atlanta BeltLine, Inc., filed a Petition for declaratory order with the Surface Transportation Board, dated January 8, 2016, in Docket No. FD 35991, requesting a determination that approval by the Surface Transportation Board was neither required for Grantor to make the initial conveyance of property described in the Deed dated December 30, 2004, nor would such approval be required for future conveyances of **any** of this property notwithstanding any Easements and Rights of Grantor encumbering this property; and

WHEREAS, by Decision dated December 15, 2016, in Docket No. FD 35991, for a specific segment of the property described in the Deed dated December 30, 2004, the Surface Transportation Board denied the above-stated declaratory order request made by Grantee and Atlanta BeltLine, Inc., and instructed Grantee and Atlanta BeltLine, Inc., to enter into such instruments as necessary to remove any limitations imposed in the First Deed of Correction that would hinder Grantor's ability to freely exercise its freight rail common carrier obligation over that specific segment; and

WHEREAS, the Grantor and Grantee wish to execute this second Deed of Correction in order to respond to the directive of the Surface Transportation Board to remove the limitations, set forth in the First Deed of Correction, on Grantor's ability to fulfill its freight rail common carrier obligations;

NOW, THEREFORE, the following paragraph is hereby deleted from page 2 of the First Corrective Deed:

"Grantees agree for themselves and their successors and assigns, as evidenced by the acceptance of the delivery and recordation of this deed that: (a) no railroad tracks or other railroad facilities shall be removed from the easement areas without

the written approval of Grantor, or its successors or assigns, and only if authorized by any and all appropriate governmental agencies; (b) no portion of the above-described easement areas will be disturbed without the prior written consent of Grantor, or its successors or assigns; (c) no grade crossings will be constructed by Grantees, or their respective successors, assigns, permittees, lessees or licensees without the consent of Grantor and only after the execution of Grantor's standard grade crossing agreement; (d) no pipelines or wirelines shall be constructed or installed under, over or upon the above-described easement areas without the prior written consent of the Grantor or its successors or assigns; (e) at the request and/or consent of Grantees, Grantor shall negotiate the joint use of the above-described easement areas, except the easement area lying north of the northerly boundary line of the Montgomery Ferry Road bridge which crosses the property described as Parcel 1, with an entity qualified to operate rail passenger service, however, Grantor shall not be entitled to compensation for the transfer of said passenger service rights; (f) Grantor shall not negotiate the use of the above-described easement areas, except the easement area lying north of the northerly boundary line of the Montgomery Ferry Road bridge which crosses the property described as Parcel 1, with any party without the prior written consent of Grantees; and (g) at the request of Grantees, Grantor shall, at no cost to Grantor, file and diligently pursue all appropriate petitions and other documents with the United States Surface Transportation Board and any other agency having jurisdiction for approval or exemption to abandon or discontinue railroad service over the above-described easement areas, except the easement area lying north of the northerly boundary line of the Montgomery Ferry Road bridge which crosses the property described as Parcel 1."

and replaced with the following paragraph:

"Grantees agree for themselves and their successors and assigns, as evidenced by the acceptance of the delivery and recordation of this deed that: (a) no railroad tracks or other railroad facilities shall be removed from the easement areas without the written approval of Grantor, or its successors or assigns, and only if authorized by any and all appropriate governmental agencies; (b) no portion of the above-described easement areas will be disturbed without the prior written consent of Grantor, or its successors or assigns; (c) no grade crossings will be constructed by Grantees, or their respective successors, assigns, permittees, lessees or licensees without the consent of Grantor and only after the execution of Grantor's standard grade crossing agreement; and (d) no pipelines or wirelines shall be constructed or installed under, over or upon the above-described easement areas without the prior written consent of the Grantor or its successors or assigns."

EXCEPT as herein set forth, all of the terms and conditions of the First Corrective Deed shall remain in full force and effect.

[Signatures appear on following page]

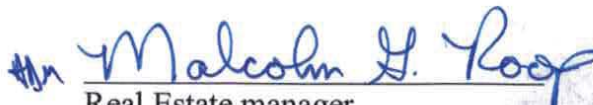
IN WITNESS WHEREOF, the Grantor and Grantee have caused these presents to be executed in their respective names by their proper officers thereunto duly authorized on the day and year first above written.

Signed, sealed and delivered in presence of:

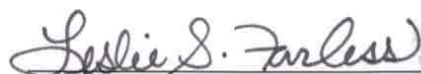
NORFOLK SOUTHERN RAILWAY COMPANY

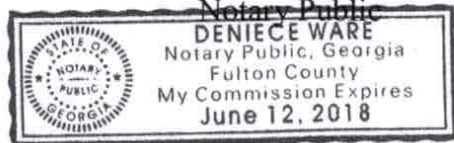
By:


Unofficial Witness


Real Estate manager

ATTEST:


Assistant Corporate Secretary



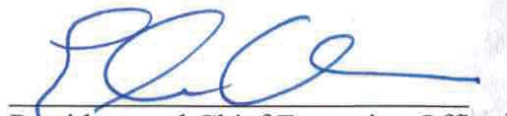
Signed, sealed and delivered in presence of:

THE ATLANTA DEVELOPMENT AUTHORITY

A public body corporate and politic of the State of Georgia

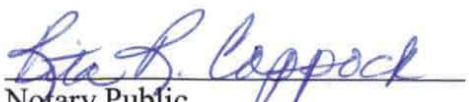
By:


Unofficial Witness


President and Chief Executive Officer



ATTEST:


Notary Public


Assistant Secretary



Cathelene Robinson
Clerk of Superior Court
Fulton County
136 Pryor Street SW

PLEASE RETAIN THIS RECEIPT, THANK YOU

CFN	Inst	Bk & Page	Amount
2017-029987	WD CORR	DE-57174-350	\$18.00
0000-000000	ADD CR	XX-00-00	\$8.00

Date Filed: Feb-13-2017 at 02:33pm

Register/Trans: BNB 20170213-98
Presented By: CHAD HENDERSON

RECORDING \$18.00

TOTAL FEES DUE \$26.00

Payment for Recording Fees:
Ck# 1894 \$26.00

TOTAL AMOUNT TENDERED \$26.00
BALANCE DUE \$0.00

DUPLICATE RECEIPT
Printed February-13-2017 at 02:34 PM

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

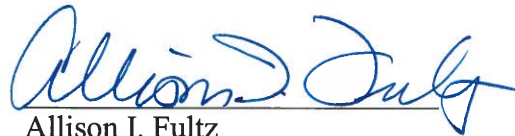
Finance Docket No. 35991

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February 2017, I have caused a copy of the foregoing Third Supplement of The Atlanta Development Authority and Atlanta Beltline, Inc. to the Petition for Declaratory Order to be served upon the following individuals via first class mail, postage prepaid:

R. Kyle Williams
Nicolas D. Bohorquez
Williams Teusink, LLC
The High House
309 Sycamore Street
Decatur, Georgia 30030

Greg E. Summy
Norfolk Southern Company
Three Commercial Place
Norfolk, VA 23510



Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW
Suite 800
Washington, DC 20036
(202) 955-5600
afultz@kaplankirsch.com