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

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

Dear Ms. Brown:

Enclosed herewith are the Original and 10 copies of the Response of The Great Walton Railroad Company, Inc. and the Introduction of New Supplemental Evidence. This filing is in response to the Order of the Board, dated August 31, 2017. Please note that I never received a copy of the Board's August 31 decision, which was late released, via the U.S. mail.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R.H. Streeter'.

Richard H. Streeter

RHS:rs

Cc: Eric Hocky, Counsel for Hartwell First United Methodist Church
Wilbur K. Chapman
Rick Glasco
Robert F. Leverett, Counsel for TORCH of Hartwell, Inc.
Jonathan Colehower, President and CEO of Quality Holdings, LLC

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



STB Docket No. AB 1242

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

Response of The Great Walton Railroad Company, Inc.
To Decision of Board dated August 31, 2017 and
Introduction of New Supplemental Evidence

By Decision of August 31, 2017, the Board directed The Great Walton Railroad Company, Inc. (GWRC) to “submit a response by October 2, 2017, explaining how it has retained the ability to provide freight rail service and why it believes that ‘there is nothing in the TORCH Agreement that precludes GWRC from using the tracks if a need exists.’”¹ The “TORCH Agreement,” which refers to a 2015 Lease Agreement that GWRC entered into with TORCH of Hartwell, Inc. (TORCH), shall be referred to hereinafter as the “2015 Lease Agreement.”

TORCH of Hartwell, Inc. (TORCH) is a non-profit corporation that has qualified as a tax-exempt organization under Section 501(c)(3) of the U.S.

¹ The Board further directed GWRC to serve a copy of its decision on TORCH and Quality Holdings, LLC (Quality). On September 11, 2017, GWRC complied with the Board’s directive by serving copies on TORCH and Quality. As explained in its Certification of Notice, because counsel for GWRC did not learn of the Board’s directive until September 11, it was unable to serve TORCH and Quality until that date.

Internal Revenue Code. TORCH “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.”² TORCH “is not chartered to perform any services as a rail carrier and has no desire or intent to acquire any common carrier obligations to perform rail services.”³

Even though a technical reading might suggest otherwise, when viewed in context, the 2015 Lease Agreement is an example of parties working together to further the public interest. The bottom line is that neither party had any intent to impose any potential restriction on GRWR’s use of its tracks to meet the needs of its customers. Nor did the parties anticipate that GWRC’s use of its tracks would interfere with TORCH’s project. Most importantly, there was never any question that the two parties knew they could work together to resolve any unforeseen conflicts that might arise in the future.

To clarify their original intent, GRWR and Torch, in response to the Board’s August 31, 2017 decision, have amended the 2015 Lease Agreement to address the issues raised by Hartwell First United Methodist Church (Hartwell First) and answer the questions raised by the STB. The changes to the 2015 Lease Agreement, which clarify that there is no impediment to GRWR’s ability to serve its customers, do not alter the way the parties intended to work

² 2017 Lease Agreement, at page 2.

³ *Id.*

together from the very outset. The negotiation and execution of the Amended Lease (hereinafter the 2017 Lease Amendment) is just another example of the parties' willingness and ability to work together to further the public interest by preventing the forced abandonment of GWRC's tracks that are needed to meet GWRC's statutory common-carrier obligations.

Summary of Argument

While GWRC appreciates the Board's efforts to identify the provisions in the 2015 Lease Agreement that are of concern, GWRC respectfully submits that the short answer to the Board's inquiry is that there was **nothing** in the 2015 Lease Agreement that placed any restrictions on GWRC's right to conduct freight operations over tracks that will be required to provide safe, economical freight service to Quality or any other potential shippers. In the first place, the tracks that are directly associated with the TORCH project are physically isolated from the tracks that are required to service Quality.

Moreover, as the 2015 Lease Agreement reflects, while GWRC agreed to allow TORCH to pursue its goals, the 2015 Lease Agreement lacks any means by which TORCH could terminate or negate GWRC's ability to resume freight rail operations consistent with its statutory common-carrier obligations. Indeed, to terminate GWRC's obligation to provide service, it would have been necessary for GWRC or TORCH to seek prior approval from the Board.

Furthermore, there is nothing in the 2015 Lease Agreement that remotely suggested that TORCH sought or acquired any operational rights from GWRC,

or that TORCH had any desire or intent to assume a common carrier obligation to perform rail service over the Premises, as defined in the 2015 Lease Agreement. The 2015 Lease Agreement simply provided TORCH the opportunity to lease and restore certain historic properties that played a significant role in the development of the City of Hartwell, following the construction of the original Hartwell Railway Company in 1879.

Although GWRC will hereinafter respond to the particular issues raised by the Board, those issues have been mooted by the 2017 Lease Amendment, dated September 29, 2017, that, in response to the Board's August 31, 2017 decision, modifies the provisions in the 2015 Lease Agreement that are of concern to the Board.⁴ The Lease Amendment makes it crystal clear that:

- GWRC has not transferred the Line away and has no intention to do so.
- TORCH is not chartered to perform any services as a rail carrier and has no desire or intent to acquire any common carrier obligations to perform rail services.
- Tracks that will be used to provide future rail freight service are no longer a part of the TORCH Lease premises.
- The explicit removal of the real property located between South Jackson Street and Athens Street from the 2015 definition of the Premises

⁴ The Lease Amendment, dated September 29, 2017, is attached for the Board's review. See *State of Maine, DOT-Acquisition and Operation Exemption, Maine Central Railroad Company*, 8 I.C.C.2d 835, 838 (1991). Attachment 1.

confirms the parties' intent to ensure that TORCH's project does not impede GWRC's renewed freight operations.

- GWRC retains the sole responsibility to maintain all of its tracks, including those tracks located within the Park area.
- TORCH has the sole responsibility to maintain all portions of the Premises that are not used by GWRC in its rail carrier operations.
- TORCH acknowledges that GWRC has the right to preserve the rail line on the Leased Premises for possible future use by passenger trains.
- Should TORCH exercise the Option to purchase the Premises as defined in the Lease Amendment at its termination on the 31st day of May 2114, GWRC, or a successor that has been approved by the Board, shall retain the common carrier obligation and the right to perform rail service.
- TORCH shall obtain the prior approval of the Board or any other appropriate regulatory body having jurisdiction over GWRC's lines of railroad to acquire the Premises.

GWRC respectfully submits that all the issues raised by the Board have been resolved by the Lease Amendment. In particular, the Lease Amendment conclusively demonstrates that GWRC has **not** "unlawfully transferred the Line away."⁵ The Lease Amendment also shows that GWRC's renewed activities will not impinge on or interfere with TORCH's project and that GWRC is solely responsible for the rehabilitation and maintenance of all of its tracks that are needed to provide future rail service for Quality. Quality recently announced

⁵ Slip Op. at 2.

that it had entered into a new contract that will substantially increase the number of rail cars that it will need to meet its expanded contractual obligations. Finally, the Board should note that the Georgia Department of Transportation (GDOT) has recently affirmed GWRC's right to restore the crossing at the intersection of GWRC's mainline and runaround tracks and South Webb Street.⁶

ARGUMENT

I. Numerous provisions in ARTICLE XVI of the 2015 Lease Agreement demonstrate that no conveyance of GWRC's rights could have been consummated without the Board's prior approval.

In its August 31, 2017, decision, the Board notes that **Article 16** of the 2015 Agreement provides that "TORCH receives an option to purchase the Line from GWRC, starting in 2052, for \$1."⁷ However, the Board never mentioned ¶ 16.6 of the 2015 Lease Agreement, in which the parties explicitly recognized that any future conveyance of real property to TORCH **"was conditioned upon approval by the appropriate regulatory body having jurisdiction over Lessor's right of way at the time of the proposed closing."** (Emphasis added). Because any such conveyance would **not** have been possible until the termination of the 2015 Lease Agreement in 2114, the 2015 Lease Agreement could not have triggered a transfer of GWRC's Line in 2015.

To eliminate any possibility of an unlawful transfer, section 16.1 of the Lease Amendment explicitly reaffirms the parties' recognition that "[a]ny such

⁶ Attachment 2.

⁷ Slip Op. at 4.

agreement to convey is conditioned upon approval by the Surface Transportation Board or any other appropriate regulatory body having jurisdiction over Lessor's right of way at the time of the proposed closing." As these provisions demonstrate, neither GWRC nor TORCH had any intent to transfer GWRC's right to operate over its right-of-way and tracks to TORCH absent the prior approval of the Board.

II. By revising the boundaries of TORCH's Railroad Street Park Project, the Lease Amendment has eliminated any potential conflict between TORCH and GWRC regarding GWRC's future operations using the entire line of railroad between South Jackson Street and Athens Street.

At page 3 of its decision, the Board suggests that the "Non-Interference" and "Quiet Enjoyment" provisions in sections 7.2 and 7.3 of the 2015 Lease Agreement,⁸ could preclude GWRC from using the tracks if a need exists. As stated above, there is no legal way for TORCH to preclude GWRC from using its tracks without obtaining the Board's approval. In any event, the reduction of the Premises in the Lease Amendment has eliminated any possibility that TORCH's activities under the Lease Amendment would preclude GWRC from using its tracks to satisfy the current and future need that already exists.⁹ Nor could GWRC's future operations over the tracks to the west of South Jackson Street interfere in any manner with TORCH's project, which is now confined to the east side of South Jackson Street. Because all of GWRC's right-of-way, tracks and track materials located to the "northwest of the southeastern edge

⁸ Slip Op. at 3-4.

⁹ The only thing that currently precludes GWRC from using its tracks is the emergency injunction that Hartwell First obtained from the local state court.

of South Jackson Street” have been “released and removed from the property subject to the Original Lease” by ¶ 3(b) in the Lease Amendment, GWRC will be able to provide service on behalf of Quality without any possible interference with TORCH’s Railroad Street Park Project.¹⁰ In short, the Lease Amendment demonstrates that TORCH and GWRC recognize and agree that the public interest would be well served by accommodating one another.

TORCH is free to rehabilitate the real property in the Depot area, which includes buildings and other structures such as the Hartwell Depot Building and loading platform, and the Rio’s Mexican Café/All Aboard Travel building. More importantly, the Amended Lease makes it clear that GWRC is also free to rehabilitate the track between Athens Street and South Jackson Street and resume operations to service its customers. There is no technical or real impediment to GWRC’s work in this area.

III. The New Lease, by eliminating GWRC’s right-of-way between South Jackson Street and Athens Street from TORCH’s project, has responded to the Board’s concerns regarding the area underlying the runaround track, as well as the remainder of GWRC’s right of way that continues west all the way to Athens Street.

The Lease Amendment has also addressed the Board’s comment at page 4 of its August 31 decision that the 2015 Lease Agreement would impact GWRC’s ability to utilize “the area underlying the runaround track as well as GWRC’s right of way continuing west from the runaround track all the way to

¹⁰ Furthermore, the Lease Amendment, at section 16.1, specifically provides that the potential option to purchase does not include any of GWRC’s tracks and track materials.

Athens Street.” The runaround tracks, which are located between Jackson and Chandler Streets and ultimately extend to Athens Street, are all that GWRC requires to meet its current common carrier obligations. Because GWRC has never used the tracks to park or store any rail cars on the Leased Premises and has no need to do so in the future, it has agreed not to do so.¹¹ By reducing the size of the Premises covered by the 2015 Lease Agreement to exclude the parcel of land to the west of South Jackson Street, the Lease Amendment eliminates any possibility that GWRC’s operations between South Jackson Street and Athens Street might impinge on TORCH’s ability to redevelop the historic area that surrounds the easternmost tracks and includes the old Hartwell Railroad depot.

The provisions of the Lease Amendment clearly repudiate Hartwell First’s unfounded contention that “[t]he 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.”¹² Hence, the Board should disregard Hartwell First’s speculative comments.

IV. The Lease Amendment has removed all the provisions in the 2015 Lease Agreement that may have appeared to grant full control of the leased property to TORCH.

Although there is some degree of ambiguity regarding the maintenance provisions of sections 8.1 and 8.2 in the 2015 Lease Agreement, it is

¹¹ See section 7.2 of the Lease Agreement. See also, GWRC Rebuttal at pp. 8-9.

¹² Adverse Abandonment Application at p. 9.

respectfully submitted that the parties never intended or understood that TORCH would be responsible for the maintenance of any segment of the Premises that GWRC would use to provide future rail service. Although the document inadvertently may have blurred the distinction between the portions of the Premises that are to be maintained by TORCH and those that are to be maintained by GWRC, the simple fact of the matter is that GWRC never envisioned that TORCH would be responsible for maintaining any tracks that GWRC would use to provide rail service.

Nor is there anything in those provisions that restricts GWRC's rights to repair its tracks and hold out service.¹³ As an operating rail carrier, GWRC must comply with the Federal Railroad Administrations' Track Safety Standards. GWRC readily acknowledges that it is solely responsible for complying with FRA's regulations governing the maintenance of tracks and performance of remedial actions to provide for the safe operations over its tracks. It also is aware that it cannot contract its maintenance responsibilities to TORCH. Hence, any suggestion that GWRC agreed to any restriction on its right to repair its tracks is baseless.

The FRA standards do not apply to the buildings and related facilities, such as the Hartwell Depot Building and loading platform, and the Rio's Mexican Café/All Aboard Travel building, that are covered by the Lease Agreement. These leased facilities will not be operated by GWRC, but instead

¹³ This too distinguishes the situation herein from that in *S. Pac. Transp. Co.—Aban. Exemption*, 9 I.C.C. 2d 385, 388 (1993) (SP has neither the right nor the obligation to make repairs so that freight service will not deteriorate).

will be rehabilitated and operated by TORCH as part of its Railroad Street Park Project.

The Lease Amendment has removed any ambiguity regarding maintenance responsibilities. Sections 8.1 and 8.2 of the 2015 Lease Agreement were deleted and replaced by new provisions that make it clear that TORCH's duty to maintain the Premises applies only to Premises that are not used by GWRC in its rail carrier operations. *See Amended Lease*, at p. 6.

Furthermore, the Lease Amendment does not allow TORCH to remove any tracks, either temporarily or permanently, that are not located within the newly defined Premises. Although TORCH is "permitted temporarily to remove any and all rails in the block between Forest Avenue and South Jackson Street, as long as [it] re-installs all such rails at the conclusion of construction in as good a condition as when they were removed," any subsequent removal and replacement of rails on a temporary basis to accomplish TORCH's purposes requires GWRC's prior written consent.¹⁴ The foregoing applies to all rails, whether they are part of GWRC's mainline or part of the multiple spur tracks that are located to the east of South Jackson Street.

The Lease Amendment, at section 8.2, also recognizes that TORCH acknowledges that GWRC "desires to preserve the rail line on the Leased Premises for possible future use by passenger trains." This provision ensures that the existing track will not be removed without the prior approval of the Board.

¹⁴ Lease Amendment at section 5.1.

V. GWRC has never had any intent to abandon any segment of its lines from Station 0+00 in Hartwell, Georgia to Station 508+32.8 in Bowersville.

Given GWRC's many public statements regarding its refusal to abandon the Line, GWRC must contest the Board's comment that GWRC's plans to rebuild its tracks are "newly-conceived." Slip Op. at 4. As is reflected by the statements of Hartwell First's witnesses, Hartwell First's Position Papers, GWRC's License Agreements with Hartwell First, GWRC's letters to the Mayor of Hartwell and to GDOT,¹⁵ GWRC has repeatedly confirmed its intent to rebuild the tracks and restore service if a need exists.

As the record also demonstrates, on August 24, 2016, over a year after the 2015 Lease Agreement was recorded, and eight months before Hartwell First filed its application, GWRC alerted Hartwell First by written letter that it had determined that it was necessary to rehabilitate its tracks that were the subject of their July 31, 2008 license agreement, so they could be restored to operating condition. Given all of the foregoing, the Board should reject Hartwell First's specious comment that "[w]hile the TORCH lease may not be evidence of GWRC's intent to abandon the Line Segment, it certainly is evidence that GWRC did not have any intent to restart rail service."¹⁶

The Board should also reject Hartwell First's unfounded speculation that "[i]t is likely that the only reason that GWRC did not abandon the Line Segment is that it would lose its title to the portions of the right of way on which it holds

¹⁵ GDOT, by letter dated September 14, 2017, has already agreed to the reinstallation of the SR 172/Webb Street Crossing." See Attachment 2.

¹⁶ Hartwell First Rebuttal at p. 5.

only an easement for railroad use, and would not have been able to enter into a lease for the entire right of way or charge TORCH as much rent.”¹⁷ Simply put, if GWRC wanted to abandon the tracks from Station 0+00 to Athens Street, why would it have bothered to enter into a lease?

As the record reflects, Hartwell First’s witnesses began harassing Mr. Anderson with demands that he abandon the tracks in 2006,¹⁸ which was nine years before Mr. Anderson negotiated the lease with TORCH. Moreover, Hartwell First did not confine its harassment to Mr. Anderson. Hartwell First’s repeated efforts to pressure TORCH are memorialized in a Report to Administrative Council from Hartwell First United Methodist’s Church’s Land Use and Planning Task Force, dated January 10, 2016.¹⁹ The preface to the Report reads as follows:

Based on conversations with TORCH and the City, the Task Force believes agreement can be reached whereby TORCH will not proceed with anything that negatively affects church property in return for the church supporting efforts to revitalize the Depot area. A formal agreement to this effect, supported by the City, is presently being negotiated but has not been finalized. We are grateful for TORCH and the City understanding and look forward to working together for the betterment of our community. However, whether the agreement is reached or not we need to proceed with the following plan in order to finalize the ownership of the track land that divides our property.

The Task Force Report, at ¶ 1) A, also reveals that months after the TORCH Agreement had been filed, GWRC “refused to request from the Surface

¹⁷ *Id.* at p. 5, n.4.

¹⁸ Rebuttal Verified Statement of Jack Edmunds at p. 3.

¹⁹ A copy of the Report is attached as Attachment 3.

Transportation Board (STB) voluntary abandonment” for the portion of the tracks between Athens Street and S. Forest Ave.

In addition, the Task Force Report, at ¶ 1) B, notes that:

The railroad has now signed a 99 year lease with a non-railroad entity (TORCH) for non-railroad purposes for property owned by the railroad between Athens Street and S. Forest Avenue. This lease also includes the rights-of-way to operate a railroad through church property and grants an option to purchase the properties and rights for \$1.00 at the end of the 99 year lease term.

The Report then sets out the steps Hartwell First intended to follow to terminate future rail service.

The Board should also consider an earlier announcement entitled “TORCH PROJECT CONCERNS CHURCH, Hartwell First United Method Church Fears Detrimental Effect.”²⁰ In this announcement, the Church acknowledged that “the project anticipates use of the railroad right of way from South Forest Avenue to Athens Street.”²¹ That announcement also notes that:

Jack Edmunds, Task Force Vice Chair, indicated this issue was not just surfacing. He said, “We met with TORCH representatives last year and discussed our future plans for programs and physical facilities. We conveyed to them our concern for their plans.” He added, “I am optimistic that this can be worked out.”

In any event, GWRC’s refusal to abandon the tracks has been vindicated by the new and expanding rail traffic that Quality is generating. Attention is invited to Mr. Colehower’s response to the Board’s August 31, 2017 decision,

²⁰ *Id.*

²¹ Attachment 4.

which is attached hereto.²² As he has confirmed, September 2017, Quality entered into a new contract with Dick's Sporting Goods. That contract has caused him to project that by 2020, Quality will require the delivery of over 100 carloads per year. As this demonstrates, GWRC correctly anticipated the need to preserve the tracks that are required to provide economical and safe rail

Conclusion

For all the above-stated reasons, The Board should find that the GWRC has not, by means of either the 2015 Lease Agreement or the 2017 Lease Amendment, transferred its Line away. The Board should also find that GWRC has demonstrated that there is an unquestionable current and future need for the tracks that will not interfere with TORCH's project. Because rail lines, once taken out of the rail system, can be lost forever, Congress has expressed a policy in favor of preservation of rail lines. As is abundantly clear in this case, if the Board grants Hartwell First's application, GWRC's lines will be lost forever, even though there is a demonstrated need to reactivate the tracks to service Quality.

Therefore, consistent its own precedents and those of Courts of Appeals that have affirmed Board decisions denying adverse abandonment applications when there is a future need for rail lines, the Board should deny Hartwell First's application. By denying Hartwell First's application, the Board will

²² Attachment 5.

protect GWRC's ability to meet its obligation to interstate commerce, generally,
and Quality, specifically.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter
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5255 Partridge Lane, N.W.
Washington, D.C. 20016
202-363-2011
rhstreeter@gmail.com

Dated: October 2, 2017

CERTIFICATE OF SERVICE

I, Richard H. Streeter, hereby certify that I have this 2nd day of October, 2017, served a copy of this Certification of Notice on all parties of record and on TORCH of Hartwell and Quality Holdings, LLC via first class mail, postage prepaid.

/s/ Richard H. Streeter

Richard H. Streeter

Attachment 1

AMENDMENT TO LEASE AGREEMENT WITH OPTION

THIS AMENDMENT TO LEASE AGREEMENT WITH OPTION ("Amendment") is made and entered into this 29th day of September, 2017, by and 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. On or about May __, 2015, Lessor and Lessee entered into that certain Lease Agreement with Option (the "Original Lease"), which provided for Lessor's lease to Lessee, and Lessee's lease from Lessor, of (1) certain real property 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 to the Original Lease (referred to in the Original Lease and hereinafter as the "Leased Premises"), and (2) certain furniture, fixtures, machinery and equipment (collectively referred to in the Original Lease and hereinafter as the "Personal Property").

B. Lessor has requested that Lessee agree to certain changes and modifications to the Original Lease.

C. Lessee has agreed to certain changes and modifications to the Original Lease.

D. HRR does not own or operate any portion of the Leased Premises or the rail line extending from Bowersville, Georgia, to Hartwell, Georgia, was erroneously included as a party to the Original Lease, and is a signatory to this Amendment solely to confirm its approval, as a party to the Original Lease, of this Amendment and to confirm its consent to be removed as a party from any further amendment or modification of the Original Lease or of this Amendment.

E. The parties desire to amend the Original Lease, as set forth in this Amendment, and to be legally bound by the provisions of this Amendment.

NOW, THEREFORE, for an in consideration of TEN DOLLARS (\$10.00) in hand paid, the mutual covenants and obligations set forth in the Original Lease and this Amendment, and other good and valuable consideration, the receipt and sufficiency of which hereby expressly acknowledged by the parties, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The above recital of facts is hereby incorporated into and made a part of this Amendment, as if fully set forth herein.

2. **Recitals.** The Recitals set forth in the Original Lease are hereby deleted in their entirety, and the following language is inserted in their place:

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"). TGWRC's tracks have historically been used in interstate rail operations dating back to the 19th Century. TGWRC has a statutory common carrier obligation to operate over its tracks and to provide service to shippers upon reasonable request. TGWRC has no intention to abandon any of its tracks or right of way. In addition to track and track materials, TGWRC owns 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. Lessee is not chartered to perform any services as a rail carrier and has no desire or intent to acquire any common carrier obligations to perform rail services.

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. TGWRC is willing to lease a portion of 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.

3. **Premises.**

(a) **Original Leased Premises.** The parties hereby restate and affirm the description of the Leased Premises set forth in the Original Lease (the "Original Leased Premises"), but only with respect to the period of time beginning on the date of the Original Lease and continuing until the date of this Amendment.

(b) **Release of Certain Real Property from Lease.** The parties intend that, as of the date of this Amendment, the Original Lease shall no longer apply to the portion of the Original Leased Premises located to the northwest of the southeastern edge of South Jackson Street, and such portion of the Original Leased Premises shall be released and removed from the property subject to the Original Lease, as amended by this Amendment. Accordingly, beginning on the date of this Amendment, the description of the Leased Premises shall not be the description set forth on **Exhibits A and A-1** to the Original Lease, but shall instead be the description set forth on **Exhibits A and A-1** to this Amendment. The property described on **Exhibits A and A-1** to this Amendment is hereinafter sometimes referred to as the "New Leased Premises". Lessee hereby releases and quitclaims to Lessor any and all portions of the Original Leased Premises that are not included in the New Leased Premises.

(c) **Construction of Lease.** As of the date of this Amendment, the terms "Leased Premises", "Premises", "Land", or "Lot", as used in the Original Lease, shall be construed as referring only to the New Leased Premises.

(d) **Railcar Turntable.** Lessee shall retain its interest in all items that constitute the Personal Property (as defined in the Lease). Although the New Leased Premises do not include the real property upon which the rail turntable is located, the rail turntable is subject to this Lease as an item of the Personal Property. Lessee shall not owe any storage fee or additional rent for storing the turn table in its current location. During the term of the Lease, Lessee shall be permitted to move the turntable to a location on the New Leased Premises, but only if Lessee first obtains TGWRC's express approval in advance. TGWRC shall not unreasonably withhold its consent.

4. **Rent.** Section 3.1 of the Original Lease is hereby deleted in its entirety, and the following language is inserted in its place:

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) **Initial Rate.** After the nine-month period, beginning on March 1, 2016, and continuing on the first of each month thereafter until September 1, 2017, 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) **Interim Rate.** Beginning on October 1, 2017, 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 THREE HUNDRED and NO/100's DOLLARS (\$300.00) per month in advance (the "Interim Rent").

(d) **Regular Rate.** Beginning on March 1, 2018, and continuing on the first of each month thereafter until July 1, 2052, Lessee shall pay to Lessor as rent the sum of FIVE HUNDRED and NO/100's DOLLARS (\$500.00) per month in advance (the "Regular Rent").

(e) **Lump Sum Payment.** Intentionally Omitted

(f) **Last Regular Payment.** On August 1, 2052 (one month after the last monthly payment of \$500.00 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").

(g) **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").

(h) **Parties' Intention.** The parties acknowledge that they intend that Lessee shall pay to Lessor the total sum of TWO HUNDRED SEVENTEEN THOUSAND SIX HUNDRED FIFTY and NO/100's DOLLARS (\$217,650.00) (the "Total Rent"), plus the nominal sum of ONE DOLLAR per year after September 1, 2052, as rent for the Term of this Lease.

(i) **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.

5. **Lessee Work.** Section 5.1 of the Original Lease is hereby deleted in its entirety, and the following language is hereby inserted in its place:

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 South Jackson Street, as long as Lessee re-installs all such rails at the conclusion of construction in as good a condition as when they were removed by Lessee; and further provided that Lessee shall not be permitted to remove any rails permanently. Further, to the extent that, after Lessee's initial removal and replacement of rails, Lessee subsequently desires to remove or relocate any rail on a temporary basis to accomplish Lessee's purposes, Lessee must receive Lessor's prior written approval to do so; such approval shall not be unreasonably withheld. All permissible 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), or potentially impacts Lessor's operations on the Leased Premises, 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.

6. **Non-Interference.** Section 7.2 of the Original Lease is hereby deleted in its entirety, and the following language is hereby inserted in its place:

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. Lessor shall not park or store any rail car or rail cars on the Leased Premises or permit any rail car or rail cars to be parked or stored on the Leased Premises. Lessor agrees, however, that Lessee shall be permitted, without charge, to store the rail car being leased to Lessee off the Leased Premises and on a portion of Lessor's line that will not interfere with Lessor's rail operations but is near the Leased Premises. Lessor will not be responsible for the rail car while stored on Lessor's line. Lessee assumes all risk of loss, damage or destruction while so stored.

As used in this modified Section 7.2, the term "Leased Premises" shall mean the New Leased Premises.

7. **Duty to Maintain.** Sections 8.1 and 8.2 of the Original Lease are hereby deleted in their entirety, and the following language is hereby inserted in their place:

8.1 **Lessee's Duty to Maintain Premises.** During the Term of this Lease, Lessee shall maintain the Premises that are not used by Lessor in its rail carrier operations 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 any portion of the Premises that are not used by Lessor to conduct rail carrier services. Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises that are not being used by Lessor to conduct rail carrier services, and acknowledges that Lessor desires to preserve the rail line on the Leased Premises for possible future use by passenger trains.

8. **Option: Generally.** Section 16.1 of the Original Lease is hereby deleted in its entirety, and the following language is inserted in its place:

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, with the exception of any and all tracks and track materials located within the Premises, 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"). Should Lessee exercise the Option, Lessee shall not assume the common carrier obligation and shall agree that Lessor, or any successor approved by the Surface Transportation Board, shall retain the common carrier obligation and the right and ability to perform all rail services consistent with its statutory obligations and this Lease.

9. **Option: Conveyance.** Section 16.6 of the Original Lease is hereby deleted in its entirety, and the following language is inserted in its place:

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 Surface Transportation Board or any other 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.

10. **Restatement of Original Lease.** This Amendment shall amend and modify the Original Lease. Except as expressly amended or modified in this Amendment, the Original Lease is hereby restated, and shall remain in full force and effect. The amendments set forth in this Amendment shall be effective as of the date of this Amendment.

11. **Entire Agreement.** The Original Lease and this Amendment contain the entire understanding of the parties with respect to the lease of the Leased Premises. There are no agreements, promises, warranties, covenants or undertakings between and among the parties other than those expressly set forth in the Original Lease or this Amendment. The Original Lease and this Amendment supersede all prior agreements and understandings between the parties with respect to its subject matter.

12. **Severability.** If any provision, paragraph, sentence or clause of this Amendment shall be declared invalid or unenforceable, the remainder of the Amendment, other than such term, condition or provision, shall not be affected thereby, and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law, as if such invalid or unenforceable provision were not contained herein.

13. **Headings.** The headings of the paragraphs and other portions of this Amendment are for convenience of reference only, shall not constitute a part of this Amendment, and shall not limit or effect the interpretation or construction of this Amendment.

14. **Governing Law.** This Amendment shall be construed, interpreted and enforced in accordance with the laws of the State of Georgia.

15. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument.

16. **Construction of Contract.** 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 Amendment. Should any provision of this Amendment 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.

17. **Modifications in Writing.** This Amendment may not be amended in any way, and no such purported amendment shall be effective, except by a writing executed by Lessor and Lessee.

18. **Recording of Lease.** The parties agree to record this Amendment in the Office of the Clerk of the Superior Court of Hart County, Georgia.

19. **Exhibits.** The following exhibits are a part of this Amendment and are incorporated herein by reference:

Exhibit A	—	Legal Description of Leased Premises
Exhibit A-1	—	Drawing of Leased Premises

20. **Hartwell Railroad Company.** Lessor represents and warrants to Lessee that Hartwell Railroad Company does not own or operate any portion of the Leased Premises or the rail line extending from Bowersville, Georgia, to Hartwell, Georgia, was erroneously included as a party to the Original Lease, and is a signatory to this Amendment solely to confirm its approval, as a party to the Original Lease, of this Amendment and to confirm its consent to be removed as a party from any further amendment or modification of the Original Lease or of this Amendment. As of the date of this Amendment, the term "Lessor", as used in the Original Lease, shall be construed as referring only to TGWRC.

(This Space Intentionally Left Blank)

IN WITNESS WHEREOF, the parties have set their respective hands and affixed their respective seals on the day and year first above written.

Lessor:

HRR:

HARTWELL RAILROAD COMPANY,
a Georgia Business Corporation

By: B.R. Anderson
B.R. Anderson, Sr., Its President and
Authorized Agent

Attest: Claire A. Treadwell
Claire A. Treadwell, Its Secretary and
Authorized Agent

[CORPORATE SEAL]

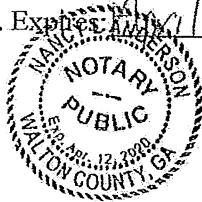
Signed, Sealed and Delivered
in the Presence of:

Linda Sauls
Unofficial Witness

Nancy L. Anderson
Notary Public Walton County, GA

[NOTARY SEAL]

My Comm. Expires April 12, 2020



(Signatures Continued on Next Page)

TGWRC:

**THE GREAT WALTON RAILROAD
COMPANY**, a Georgia Business Corporation

By: B.R. Anderson
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:

Linda Sauls
Unofficial Witness

Nancy P. Anderson
Notary Public, Walton County, GA

[NOTARY SEAL AFFIXED]

My Commission Expires April 12, 2020

(Signatures Continued on Next Page)

Lessee:

TORCH OF HARTWELL, INC.,
a Georgia Nonprofit Corporation

By: Mary P. Gidley
Mary Gidley, Its President and
Authorized Agent

Attest: Nicki Meyer
Nicki Meyer, Its Secretary and
Authorized Agent

[CORPORATE SEAL]

Signed, Sealed and Delivered
in the Presence of:

Robert L.
Unofficial Witness

Charles L. Wheeler
Notary Public, HARTWELL County, GA
[NOTARY SEAL]

My Comm. Expires: 2-20-2018
Exp. Date

/Volumes/Server Data/Rob/FULL COPY/Real Estate/1/TORCH pf Harwell RR/Amendment to Lease Final.doc

EXHIBIT A
TO AMENDMENT 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 SEPTEMBER , 2017

(Legal Description of Leased Premises)

TRACT ONE:

All that tract or parcel of land, with improvements thereon, lying and being in the 1112th G.M. District of Hart County, Georgia, in the corporate limits of the City of Hartwell, more particularly described in that certain plat of survey prepared by W. Slate Bauknight, Registered Land Surveyor, dated January 11, 2013, said plat being expressly by reference incorporated into and made a part of this description, LESS AND EXCEPT the portion of the right-of-way for the Hartwell Railroad that is depicted on such plat of survey and located to the northwest of the southeastern edge of South Jackson Street.

This property is bounded now or formerly as follows, as shown on said plat: On the Northeast by property of Worley, property of Moore, property of Marett, property of Purcell, property of Hart Community Theater, property of Louise Bisso, other property of Louise Bisso, property of Sharif H. Farhan, property of Lee Carter, Jr., property of Rita Smith, et al., property of The Hartwell Railroad, property of Eddie Corcino, property of Jeff Sadler, property of 13 Depot Street, LLC, property of Hart Outfitters, LLC, and other property of Hart Outfitters, LLC; on the Southeast by the northwestern boundary of the right-of-way for South Forest Avenue and property of Eddie Corcino; on the Southwest by property of Francis J. Trainor, property of Eddie Corcino, and the northeastern boundary of the right-of-way for Railroad Street; and on the northwest by the southeastern boundary of the right-of-way for South Jackson Street.

This property comprises (1) the right-of-way for the Hartwell Railroad extending from South Forest Avenue to the southeastern edge of South Jackson Street in the corporate limits of the City of Hartwell, Georgia, and (2) the land between the northeastern side of Railroad Street, the southeastern edge of South Jackson Street, the southwestern boundary of the right-of-way for the Hartwell Railroad, the northwestern boundary of the lot owned by Eddie Corcino. This property is known as Tax Parcel I57H 000, using the present system of the Hart County Tax Assessors for designating parcels of real property for purposes of ad valorem taxation in Hart County, Georgia.

TRACT TWO:

All that tract or parcel of land, with improvements thereon, lying and being in the 1112th G.M. District of Hart County, Georgia, in the corporate limits of the City of Hartwell, known as 41 Depot Street and the location of the former California Mexican Café (also known as Rio's Mexican Café) on Depot Street, bounded now or formerly as follows: On the Northeast by the southeastern boundary of the right-of-way for Depot Street; on the Southeast by property of

Eddie Corcino; on the southwest by the right-of-way for the Hartwell Railroad; and on the Northwest by property of Rita Smith, et al.

This property is known as Tax Parcel I57D 100 001, using the present system of the Hart County Tax Assessors for designating parcels of real property for purposes of ad valorem taxation in Hart County, Georgia.

The above-described Tracts One and Two include the following property:

All that tract or parcel of land, with improvements thereon, lying and being in the 1112th G.M. District of Hart County, Georgia, in the corporate limits of the City of Hartwell, on the northeast side of Railroad Street, containing 0.540 acre (23,501 square feet), more or less, and being more particularly described in a plat of survey prepared by Aaron P. Blomberg, Registered Land Surveyor, dated May 21, 2014, recorded in Plat Book _____, at Page _____, in the Office of the Clerk of the Superior Court of Hart County, Georgia, said plat and the recording thereof being expressly by reference incorporated into and made a part of this description

This property is more particularly described as follows:

BEGINNING at a PK nail found in the City of Hartwell, Georgia, at the intersection of the centerline of Railroad Street and the centerline of South Forest Avenue;

THENCE running North 70° 36' 40" West for a distance of 219.93 feet to an iron pin set at the intersection of the northeastern boundary of the right-of-way for Railroad Street with the common boundary between property of The Great Walton Railway Company and property of Eddie Corcino and the TRUE POINT OF BEGINNING;

THENCE turning and running 73° 54' 15" West along the northeastern boundary of the right-of-way for Railroad Street North for a distance of 145.11 feet to a PK nail set on such boundary;

THENCE turning and running North 13° 40' 05" East for a distance of 68.36 feet to a PK nail set on the southwestern boundary of the right-of-way for the Hartwell Railroad;

THENCE running North 13° 40' 05" East for a distance of 31.11 feet to a point on the northeastern boundary of the right-of-way for the Hartwell Railroad;

THENCE turning and running South 77° 13' 35" East along the northeastern boundary of the right-of-way for the Hartwell Railroad for a distance of 33.71 feet to a point at a building corner on such boundary;

THENCE turning and running South 76° 54' 00" East along the northeastern boundary of the right-of-way for the Hartwell Railroad for a distance of 30.60 feet to a point at a building corner on such boundary;

THENCE turning and running North 13° 12' 10" East along a party wall for a distance of 60.60 feet to a point on the southwestern boundary of the right-of-way (80 feet wide) for Depot Street;

THENCE turning and running South 76° 55' 55" East along the southwestern boundary of the right-of-way (80 feet wide) for Depot Street for a distance of 81.73 feet to a point at a building corner on such boundary;

THENCE turning and running South 13° 46' 35" West along a party wall for a distance of 60.81 feet to a point at a building corner on the northeastern boundary of the right-of-way (80 feet wide) for the Hartwell Railroad;

THENCE turning and running South 76° 45' 55" East along the northeastern boundary of the right-of-way for the Hartwell Railroad for a distance of 77.99 feet to a ½-inch open top pipe found at a building corner on such boundary;

THENCE running South 76° 40' 05" East along the northeastern boundary of the right-of-way for the Hartwell Railroad for a distance of 102.77 feet to a #4 re-bar found at a building corner on the northwestern boundary of the right-of-way (80 feet wide) for South Forest Avenue;

THENCE turning and running South 13° 35' 30" West along the northwestern boundary of the right-of-way (80 feet wide) for South Forest Avenue for a distance of 11.77 feet to a PK nail set on such boundary;

THENCE turning and running North 76° 40' 05" West along the southwestern boundary of the right-of-way for the Hartwell Railroad for a distance of 86.00 feet to an iron pin set;

THENCE turning and running South 13° 35' 55" West along the boundary of the right-of-way for the Hartwell Railroad for a distance of 6.96 feet to an iron pin set;

THENCE turning and running North 76° 40' 05" West along the southwestern boundary of the right-of-way for the Hartwell Railroad for a distance of 34.00 feet to an iron pin set;

THENCE turning and running South 13° 35' 30" West along the boundary of the right-of-way for the Hartwell Railroad for a distance of 12.50 feet to a point;

THENCE turning and running North 76° 39' 40" West along the southwestern boundary of the right-of-way for the Hartwell Railroad for a distance of 60.89 feet to an iron pin set;

THENCE turning and running South 13° 55' 35" West for a distance of 76.00 feet to an iron pin set on the northeastern boundary of the right-of-way for Railroad Street and the TRUE POINT OF BEGINNING;

This property is a portion of the property described in a Limited Warranty Deed from Hartwell Railway Company to The Great Walton Railroad Company, dated May 5, 1990, recorded in Deed Book 217 at Pages 162-169, in the Office of the Clerk of the Superior Court of

Hart County, Georgia, said deed being expressly by reference incorporated into and made a part of this description.

Tract One and Tract Two are highlighted in green on the tax map attached to this Amendment as **Exhibit A-1**, which is incorporated into and made a part of this Amendment, as if fully set forth herein.

EXHIBIT A-1
TO AMENDMENT 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 SEPTEMBER , 2017

(Drawing of Leased Premises)

Attachment 2

Russell R. McMurtry, P.E., Commissioner



GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center, 600 West Peachtree Street, NW
Atlanta, Georgia 30308
Telephone: (404) 631-1000

September 14, 2017

Mr. Bennie Ray Anderson
President
The Great Walton Railroad
1081 North Cherokee Road
Social Circle, Georgia 30025

Subject.: **Highway 172 (Webb Street) Tracks, Hart County**

Dear Mr. Anderson:

The Department has reviewed your request to allow The Great Walton Railroad Company to reinstall the tracks at the SR 172/Webb Street Crossing in Hartwell, Ga. By copy of this letter, the Department agrees to the reinstallation of the SR 172/Webb Street Crossing solely at The Great Walton Railroad Company's expense. In the interest of public safety, the Department requests that The Great Walton Railroad Company submit the following information for review and concurrence (as applicable) in lieu of submitting a permit request:

1. Dimensions of the roadbed – Must be English units.
 - a. Pavement width. (Indicate centerline, curb & gutter or edge of pavement (EOP))
 - b. Distance to shoulder point, ditch and/or toe of slope.
 - c. Show grass/concrete median and sidewalk, if applicable.
2. Right of Way width. (Note: If r/w varies you will need to indicate these changes and not use the word "varies")
3. North Arrow.
4. Show location of traffic signals, if exists.
5. Location of all above and below ground structures to be navigated. (i.e. storm drain, culverts, bridges, existing utilities, walls, parking lots, buildings, driveways, side streets, signal, etc.)
6. Test holes are required when boring under or over existing facilities/structures. Show test hole locations and size with details on existing facility/structure.
7. Posted speed limit.
8. Local street names for state route and side streets shown.
9. Note unpaved roads and if driveways are paved or dirt.
10. Clearly identify and differentiate existing and proposed facilities in legend.
11. Distance to proposed facility from right of way, edge of pavement and face of curb where curb exist.
12. Depth of cover of proposed facility noted at back-slope, ditches, shoulders & pavement.
13. Location of proposed installation showing distances to nearest intersecting street or milepost.
14. Length, size, type of proposed utility, and distance between proposed structures.

15. Detailed distances for offset portions of installation from right of way
16. Boring (Detailed profile)
 - a. Type and length of bore.
 - b. Length, size and type of casing, if applicable.
 - c. Bore pits - location dimensioned from edge of pavement, size and vertical difference from bottom of pit to EOP. Bore pits are to be minimum 1' to 1' ratio from EOP (for every 1' in depth 1' from EOP) or minimum of 10' from EOP, whichever is greater.
 - d. Outside diameter of bore and outside diameter of facility being proposed.
 - e. Shoring details if applicable.
 - f. Plot existing facility/structure to be navigated.
 - g. Depict right of way, ditches, pavement, etc.
 - h. Special Provision for directional bore on limited access routes (Directional Boring Under Interstate and Limited Access Highways).
17. Pavement cuts - note justification, dimension, location from EOP and known travel lanes, size and method of repair. Note limits of mill and inlay if applicable. (Depends on age of existing pavement, please contact District Utilities Office for information)
18. Method of installation.
19. Detailed explanation for any installation other than in back five feet of the right of way. **(Note on drawing why facilities cannot be located in the back five feet of r/w or include exception letter if under pavement.)**
20. Location of proposed fire hydrant, manholes, etc., including distance from pavement and right of way.
21. Casing required when facility has "wash" factor (i.e. water, sewer, petroleum) or in the area of existing structures (bridges, culverts).
22. Profile for all road crossings.
23. Length and width of clearing.
24. Note whether company forces or sub-contractor will be used. (Special assurance form required for sub-contractor)
25. Distance from edge of travel lane/face of curb for existing and proposed above ground facilities.
26. Overhead clearance noted on profile for crossings at low point.
27. Location of temporary poles or guy poles if applicable.
28. Average daily traffic (ADT) volumes noted when clear zone must be evaluated.
29. Indicate poles as new, replaced, or existing to remain.
30. Cross-sections of the current terrain at the proposed above ground facility if above ground structures are inside clearzone. Cross-section to include slope ratios

Please note that this letter does not authorize The Great Walton Railroad Company to begin any work within Public Right of Way at this time. A separate Notice to Proceed letter will be sent to The Great Walton Railroad Company to authorize the installation of the tracks once the requested information has been submitted and reviewed by the Department. The Department is prepared to assist with any lane closures necessary to complete the work at this crossing.

RE: Hartwell Railroad Company; SR 172/Webb Street Crossing
Track Installation
Page 3

If you have any questions or need further information, please contact Kevin Cowan, Utilities Railroad Crossing Engineer, at 404-631-1375 or by e-mail at kcowan@dot.ga.gov. Please send correspondence by mail addressed to State of Georgia, Office of Utilities, One Georgia Center, 600 West Peachtree Street, 10th Floor, Atlanta, Georgia 30308.

Very truly yours,


Patrick Allen, P.E.
State Utilities Engineer

PA: JP: kdc

Attachments

cc:

Brent Cook, P.E., District Engineer, Gainesville, Georgia
Attn.: Robby Oliver, District Utilities Manager
Roger Mealar, Area 3 Manager, Carnesville, Georgia
Andy Doyle, P.E., State Maintenance Engineer
Joey Dorsey, The Great Walton Railroad Company (via Email)

Attachment 3

POSITION PAPER

HARTWELL FIRST UNITED METHODIST CHURCH RAILROAD SITUATION

PREFACE

Based on conversations with TORCH and the City, the Task Force believes agreement can be reached whereby TORCH will not proceed with anything that negatively affects church property in return for the church supporting efforts to revitalize the Depot area. A formal agreement to this effect, supported by the City, is presently being negotiated but has not been finalized. We are grateful for TORCH and the City understanding and look forward to working together for the betterment of our community. However, whether the agreement is reached or not we need to proceed with the following plan in order to finalize the ownership of the track land that divides our property:

- 1) A - Hartwell Railroad Company operates a railroad line from Bowersville to Hartwell ending at South Forest Avenue. Within the city limits between Athens St. and S. Forest Ave. the church owns property that borders and is bisected by a portion of the railroad track which is not presently used and has not been used for over 20 years. We think there is strong possibility the church legally owns this land that bisects our property (see #2 below). Hartwell Railroad refused to request from the Surface Transportation Board (STB) voluntary abandonment for that portion of the track.

B - The railroad has now signed a 99 year lease with a non-railroad entity (TORCH) for non-railroad purposes for property owned by the railroad between Athens Street and S. Forest Avenue. This lease also includes the rights-of-way to operate a railroad through church property and grants an option to purchase the properties and rights for \$1.00 at the end of the 99 year lease term.

C -- STB rules provide railroads the authority and require the operation of a public railroad where there is a public need for rail service. For 20 years no train has operated, and there is no present or foreseeable need for rail service between Athens Street and S. Forest Avenue.

D - A railroad right-of-way deed is a special conveyance of exclusive use and possession granted to a railroad to construct and operate a railroad. Hartwell Railroad owns nothing other than the right to operate a train over the tracks that bisect Church property. Train service has not occurred in over 20 years on this portion of the line. We feel the tracks are now improperly leased for non-railroad purposes to a non-railroad.
- 2) There are two Right-of-Way deeds associated with property now owned by the Church which in 1880 granted the railroad permission to build the track and operate a train through the property:
A - Thornton ROW Deed provides "for right of way through said land...for use of said Hartwell RR for all Rail Road purposes",
B - Seidell ROW Deed provides "through which said railroad be constructed, run and operated...if track ever taken up or line moved then ROW is to be void and the said land revert"
- 3) U. S. Court of Claims stated "conversion of railroad rights-of-way to recreational trail use was not within the scope of the easement granted by the landowners" for railroad purposes.

- 4) Georgia Court of Appeals has ruled that an instrument conveying "in fee simple" to a railroad and its successors, assigned the right to build and operate a railroad through a certain tract of land, and language referring to a "way for their track..." did not convey the land itself, but rather conveyed the particular kind of easement known as a railroad right of way.
- 5) The Supreme Court of Georgia has held that title to railroad right-of-way vested in adjoining owners when the railroad abandoned its line regardless of whether the deed conveyed easement or determinable fee, and thus the railroad had nothing to convey to anyone else.
- 6) We conclude:
 - A - That the impact of these cases and other interpretations verifies the two church deeds are a conveyance of an easement for railroad exclusive use and possession, but nothing else – meaning the ROW lapses when it is not being used for railroad purposes.
 - B - Recent law reviews indicate that even the wording "for Railroad purposes in fee simple" means the railroad has exclusive use and possession of the land for railroad purposes, and "exclusive" means use and possession are exclusive to operate a railroad. So when the railroad use is no longer, the right goes away.
- 7) Some property associated with the railroad operations is legally owned by Hartwell Railroad but that property continues to be under the authority of STB and subject to being required to be operated as a railroad. The safe way for TORCH to utilize property legally owned by Hartwell Railroad which it has leased for non-railroad purposes is for that portion of the line to be abandoned. This is the best alternative available even for the property legally owned by Hartwell Railroad, which in our opinion does not include the land under the rights-of-way.
- 8) Under these circumstances the only choice for the church is to file for an Adverse Abandonment ruling with STB. We have been advised by three law firms and STB that our facts are good for being successful in this action; however, there are no guarantees.
- 9) After receiving a favorable ruling on Abandonment from STB the church would then still need to file with Hart County Superior Court for clear title or "quiet" title. That is not to assert that the church could not claim title without abandonment but we have been advised the surest path under our facts is to file for abandonment with STB first followed by Superior Court action.

January 10, 2016 Report to Administrative Council from
Land Use and Planning Task Force

Attachment 4

TORCH PROJECT CONCERNS CHURCH

Hartwell First United Methodist Church

Fears Detrimental Effect

Following last week's announcement that TORCH had signed a long term lease with the Hartwell Railroad, Hartwell First United Methodist Church has expressed strong concerns about how later phases of the overall project might affect the church's future programs and expansion plans.

While not mentioned in the article, as previously reported the project anticipates use of the railroad right of way from South Forest Avenue to Athens Street. The church's concern is TORCH'S plan to have a walking trail on the railroad ROW from Webb Street to Athens Street. This portion of the ROW bisects property owned by the church and includes a turntable TORCH expects to be a major tourist attraction.

A called Charge Conference, the governing body of the church, had previously formed a Land Use and Planning Task Force to address the issue and this body has met with the TORCH board. Joe Whittemore, Task Force Chair, said, "I think it's fair to say the TORCH board did not agree that Phase III could negatively affect the church but it was a very cordial meeting and we appreciate them giving us an audience." Whittemore also indicated the church had no objection to the first phase of the project that was described in last week's paper. "At this point we are fully supportive of TORCH's efforts and plans east of Webb Street. It's what is planned between Webb Street and Athens Street, what TORCH refers to as Phase III that bothers us", he said. "This is a serious problem but we want to work with all interested parties to find a solution; however, it is important that the church be able to safely utilize its property in order to accomplish its mission. Once we

have a chance to review the lease in detail we will have a better idea of the effect on the church."

Over the past ten years, the church has invested over \$3.5 million in downtown Hartwell on improvements and additions to their campus based on the belief and understanding that the land under the tracks would revert to the church. A large portion of this was spent on the purchase and clean-up of the old Springs Industries/Hartwell Mills land and abandoned buildings.

Jack Edmunds, Task Force Vice Chair, indicated this issue was not just surfacing. He said, "We met with TORCH representatives last year and discussed our future plans for programs and physical facilities. We conveyed to them our concern for their plans." He added, "I am optimistic that this can be worked out."

According to the church's senior pastor, Dr. Allen Stewart, "We are all sincerely interested in improving our community and we, as a church, must be true to our mission. Hopefully, as we move forward, we can explore options that will be mutually beneficial to our church, TORCH and our community at large."

Hartwell First United Methodist Church is a congregation of over 800 members. They have had a presence in downtown Hartwell for 161 years.

-END-

Attachment 5

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1242

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

Supplemental Verified Statement of Jonathan Talbot Colehower

1. My name is Jonathan Talbot Colehower. I am the President and CEO of Quality Holdings, LLC. (Quality). My business address is 300 Fisher Dr., Hartwell, Georgia. I have personal knowledge of the facts stated herein and am duly authorized to present this Supplemental Verified Statement on behalf of Quality in support of The Great Walton Railroad Company, d/b/a Hartwell Railroad Company (Great Walton).

2. I was duly served with a copy of the Board's Decision dated August 31, 2017. I have carefully reviewed that Decision and the questions the Board raised regarding a 2015 "Lease Agreement With Option" that Great Walton entered into with TORCH of Hartwell, Inc. As a result, I am aware that the Board has provided Quality the opportunity to submit its reply to Great Walton's response to the Board's decision. Because this proceeding is of crucial importance to Quality, I must express my gratitude to the Board for providing Quality an opportunity to respond to Great Walton's pleading.

3. I have concluded that it is imperative that the Board be made aware of new evidence that demonstrates Quality's increased need for Great Walton's services. In this regard, I request the Board to take notice of an article that appeared in the September 7, 2017 edition of The Hartwell Sun. The article is entitled *Quality Holdings acquires Dick's Sporting Goods contract*. As is explained in that article, Quality expects "to manufacture approximately 100,000 kayaks each year."¹ The article also notes "[f]or Quality Holdings, this also means an expansion of its employment as well as its manufacturing equipment."

4. Because the article does not discuss the impact on the instant proceeding, I also request the Board to consider various factors that will be impacted by this proceeding. Because several of the factors include highly confidential information regarding the anticipated substantial increase in the volume of raw materials that will be delivered by rail, I am reluctant to provide details. However, to meet the demands of this new contract, I now project that Quality will require delivery by rail of approximately 100 carloads or more of raw material per year in 2020. As was noted in my initial statement, prior to the new contract discussed above, we were projecting only 25 cars per year in 2017. Furthermore, I am hopeful that the planned expansion of our current facilities will result in additional shipments by rail.

¹ A verbatim copy of the article is attached to this statement as Attachment 1.

5. I have discussed Quality's need for increased rail service with Great Walton officials and have been assured that if the adverse abandonment application is denied, Great Walton will be ready, willing and able to satisfy Quality's need for additional rail service.

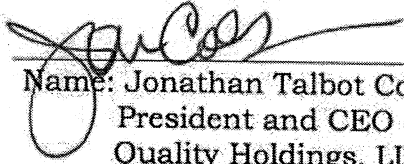
6. I must also note that because Quality's basic method of operations, which is described in my initial Verified Statement, will not be modified but merely expanded over the next few months, there is no way that Quality could undertake its planned expansion if it would have to depend on truck service. To undertake the expansion, Quality must be assured that it will be able to depend on Great Walton's ability to provide safe, economical and reliable rail service. Based on the calculations set forth at paragraph 4 of my original statement regarding the increased cost of raw materials if Quality were forced to utilize truck service, Quality adamantly rejects any suggestion that trucking is a viable alternative to Great Walton.

7. I also wish to confirm that comment in the news article that the new contract will immediately result in the addition of a dozen new jobs in Hartwell. I anticipate that further jobs will be created as production increases.

8. Given the foregoing, I submit that it is clearly in the public interest to deny the application for adverse abandonment. Because any delay in the resolution of this matter is clearly contrary to the public interest, I urge the Board to deny the application in an expedited fashion.

VERIFICATION

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


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

Date: September 30, 2017

Attachment 1

**Quality Holding acquires Dick's Sporting Goods contract
By Vivian Morgan, The Hartwell Sun, September 7, 2017**

Quality Holdings LLC of Hartwell just acquired a long-term contract to build kayaks for Dick's Sporting Goods.

According to Quality Holdings CEO Jonathan Colehower, this is a strategic move for Dick's Sporting Goods.

"It will be launching its own brand of kayaks in the spring of 2018," Colehower told *The Hartwell Sun* on Wednesday morning. "over the next two years, we expect to manufacture approximately 100,000 kayaks each year. Water sports is a fast growing category for retailers."

For Quality Holdings, this also means an expansion of its employment as well as its manufacturing equipment.

"Immediately, it will create a dozen new jobs and we will continue to grow in the coming months," Colehower said.

Dick's Sporting Goods talked with a number of companies across the United States before deciding on Quality Holdings.

"I think the first reason they chose us was the skill and expertise we have with manufacturing boats," Colehower said. "Second is the capacity that we have and our ability to manufacture that many boats. We also sit on the Hartwell Railroad and that gives us a significant cost advantage."

Quality Holdings has been in existence for 40 years. The company was acquired by Jordan Blanchard Capital in 2015. It is located at 300 Fisher Drive, Hartwell.

"This is a great opportunity for us," Colehower said.