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November 14, 2016

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November 14, 2016
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Ms. Cynthia T. Brown
Chief of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20023

**RE: STB Docket No. AB-55 (Sub-No. 643X), CSX Transportation, Inc.,
In La Porte, Porter and Starke Counties, IN
Petition to Reopen Offer of Financial Assistance Proceeding**

**FD 36076, Chesapeake And Indiana Railroad Company
Petition for Declaratory Relief**

Dear Ms. Brown:

On behalf of the Chesapeake and Indiana Railroad (CKIN”), Petitioner in the above-captioned proceedings, I am filing an original and ten copies of a combined Petition to Reopen and Petition for Declaratory Relief along with exhibits. I am also submitting as an additional exhibit identified as Exhibit A the complaint CKIN has filed in Indiana state court against the Town of North Judson, the respondent in this proceeding.

Finally, I am enclosing a copy of CKIN’s Petition on a disk and a check payable to the Board to cover the requisite filing fees. Please date stamp and return one copy of the Petition and related exhibits.

FEE RECEIVED
November 14, 2016
SURFACE
TRANSPORTATION BOARD

Sincerely yours,

John D. Heffner

FILED
November 14, 2016
SURFACE

TRANSPORTATION BOARD

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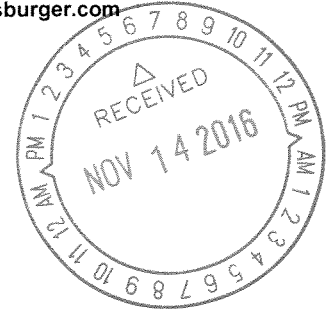
Enclosures

cc: Service list parties

November 14, 2016

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**FD 36076, Chesapeake And Indiana Railroad Company
Petition for Declaratory Relief**

Dear Ms. Brown:

Pursuant to the Board's Rules of Practice at 49 CFR §§1115.3, 1115.4, and 1117.1, I am writing on behalf of the Chesapeake And Indiana Railroad Company ("CKIN"), Petitioner in the above-captioned proceedings, to request a waiver of the page limit requirements in §1115.3(d). Specifically, that section provides that a petition to reopen may not exceed 20 pages in length.

Good cause exists for granting CKIN's waiver request. While the petition is 24 pages in length, that page count includes the numbered cover page containing no textual material and three pages of argument summary. Deducting those pages, the Petition contains 20 pages of text. Furthermore CKIN's Petition seeks both declaratory relief, for which there is no page limitation, and reopening. Had CKIN chosen to file separate petitions, its reopening request would be substantially under the 20 page limit. However, administrative efficiency concerns suggest that filing a combined petition would be a better way to proceed. Finally, CKIN's Petition

Ms. Cynthia T. Brown

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presents unique and complicated issues for which a shorter pleading would not do justice.

CKIN appreciates the Board's indulgence in this matter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "J. D. Heffner", with a long, sweeping horizontal line extending to the right.

John D. Heffner

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-55 (Sub-No. 643X)

**CSX TRANSPORTATION, INC.-ABANDONMENT EXEMPTION-
IN LAPORTE, PORTER AND STARKE COUNTIES, IN**

**CHESAPEAKE AND INDIANA RAILROAD
PETITION TO REOPEN
OFFER OF FINANCIAL ASSISTANCE PROCEEDING**

FD 36076

**CHESAPEAKE AND INDIANA RAILROAD COMPANY
PETITION FOR DECLARATORY RELIEF**

Submitted by
John D. Heffner
Strasburger & Price, LLP
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Suite 717
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Filed: November 14, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-55 (Sub-No. 643X)

**CSX TRANSPORTATION, INC.-ABANDONMENT EXEMPTION-
IN LAPORTE, PORTER AND STARKE COUNTIES, IN**

**CHESAPEAKE AND INDIANA RAILROAD
PETITION TO REOPEN
OFFER OF FINANCIAL ASSISTANCE PROCEEDING**

FD 36076

**CHESAPEAKE AND INDIANA RAILROAD COMPANY
PETITION FOR DECLARATORY RELIEF**

I.
INTRODUCTION

Pursuant to 5 U.S.C. § 554(e), 49 U.S.C. §§1321 and 1322(c), and 49 C.F.R. § 1115.45, Chesapeake And Indiana Railroad (“CKIN”), a Class III short line railroad operating in the State of Indiana, submits this Petition seeking reopening of the above-captioned offer of financial assistance (“OFA”) proceeding and/or declaratory relief. CKIN anticipates submitting additional material obtained through discovery in either this proceeding or the civil action that it filed on October 31, 2016.¹ CKIN asks the Board to find that the 2004 acquisition and ownership of the subject line of railroad by the Town of North Judson (“the Town”) under the OFA procedures was contrary to the

¹ *The Chesapeake And Indiana Railroad Company, Inc., v. Incorporated Town of North Judson*, Docketed as Cause No. 46C01-1610-PL. A copy of the complaint and attachments are submitted as Exhibit A and are contained in a separate volume of this filing.

the requirements of 49 U.S.C. §10904(d)-(f) as well as the rail transportation policy (“RTP”) goals of the ICC Termination Act (“ICCTA”)² and the policies of the Board. Accordingly, it seeks a Board ruling voiding the Town’s acquisition and requiring it to sell the subject line to CKIN under Board supervised negotiations. Alternatively, CKIN requests that the Board institute an investigation to determine whether the Town’s ownership and administration of the Line violates the RTP goals and Board precedent. Should the rail carrier selected by the Town to replace CKIN as its operator seek authority by a class exemption, CKIN requests that the Board reject that exemption as controversial.

II. STATEMENT OF FACTS

The rail line that is the subject of this proceeding (“the Line”) extends from milepost CF 0.63, at LaCrosse, to milepost CF 15.23, at Wellsboro, and from milepost CI 212.55, at North Judson, to milepost CI 230.92, at Malden, a total of 32.97 miles of trackage in LaPorte, Porter and Starke Counties, IN. It formed a part of a CSX mainline known as the “Chesapeake & Ohio Railway of Indiana” that had connected Cincinnati, OH, with the Chicago Area. CSX had obtained authority to abandon that line in segments and on March 3, 2004, the Board approved CSX’s request to abandon this segment.³ Subsequently, the Town acquired the Line through an OFA representing that it desired to

² 49 U.S.C. §10101.

³ *CSX Transportation, Inc.-Abandonment Exemption-In LaPorte, Porter, and Starke Counties, IN*, Docket AB-55 (Sub-No. 643X) (STB served Feb. 20, 2004).

continue common carrier railroad service over it⁴ and selected CKIN as its operator.⁵ CKIN and the Town negotiated an Operating Agreement (“the 2004 Operating Agreement”) that was extended through December 31, 2015, and more recently through August 15, 2016, when it expired. The 2004 Operating Agreement which provides that CKIN shall provide all originating and terminating common carrier rail service states, “it shall permit the Hoosier Valley Railroad Museum (“HVRM”)⁶ to use the Rail Line in common with CKIN, consistent with safety, liability and regulatory considerations, for passenger excursion operations pursuant with Preservation and Educational goals.”⁷ The 2004 Operating Agreement at section 4.⁸

To finance that acquisition, the Town used \$1,500,000 of Transportation Enhancement Funds provided in substantial part by the Federal Highway Administration to Indiana’s Department of Transportation with \$300,000 furnished by the predecessor of Co-Alliance, Inc. (“Co-Alliance”),⁹ the principal on-line customer, and the balance by three counties served by the Line.¹⁰

This arrangement continued on a satisfactory basis until 2014 when the relationship between CKIN and the Town deteriorated owing to some disputes

⁴ *CSX Transportation, Inc.-Abandonment Exemption-In Laporte, Porter, and Starke Counties, IN*, Docket AB-55 (Sub-No. 643X) (STB served May 14, 2004).

⁵ The STB authorized CKIN’s operations in *Chesapeake & Indiana Railroad Company, Inc.-Operation Exemption-The Town of North Judson, IN*, STB FD 34529 (STB served Aug. 20, 2004).

⁶ An exempt intrastate passenger excursion train operator.

⁷ HVRM’s service commenced shortly after acquisition from CSX.

⁸ Attached as Exhibit 1.

⁹ See, letter from Co-Alliance to the Board dated June 30, 2016, attached as Exhibit 2.

¹⁰ A copy of the relevant pages of the Agreement for Transportation Enhancement Funds is attached as Exhibit 3.

between CKIN and HVRM. See verified statement of Powell Felix VS ("Felix VS") at page 2, attached hereto. In the Spring of 2015, the Town advised CKIN that it would not renew the 2004 Operating Agreement upon its expiration at the end of the year and would seek a replacement operator. CKIN refused to terminate operations or seek discontinuance authority with the result that the Town initiated an adverse discontinuance proceeding by filing a petition for waiver with the Board and providing notice of a future application.¹¹ Ultimately, CKIN and the Town agreed to mediate their dispute. At the request of the parties, Co-Alliance agreed to participate in the mediation session. Town has yet to prosecute its adverse discontinuance application.¹²

The parties participated in a mediation session on December 9, 2015, resulting in a settlement document identified as the Mediation Agreement.¹³ The spirit (but not the wording) of the Mediation Agreement was that the Town would lease the line to Co-Alliance for a new 10 year term. Co-Alliance would assume responsibility for contracting with a rail operator for the line, and Co-Alliance's preference was to attempt to negotiate new terms and conditions for CKIN to remain the operator of the line. Felix VS at pages 3-4. A Supplement to the Mediation Agreement also extended the 2004 Operating Agreement through August 15, 2016, allowing the Town to satisfy state requirements for a Request for Proposal solicitation, complete lease negotiations, and allow the

¹¹ Docketed as *Town of North Judson, IND.-Adverse Discontinuance of Service In LaPorte, Porter and Starke Counties, IND*, Docket AB-1232.

¹² CKIN anticipates that the Town will soon initiate adverse discontinuance proceedings against it.

¹³ The Mediation Agreement and the Supplement to the Mediation Agreement are attached as Exhibits 4 and 5.

lessee to obtain operating authority. But it was understood that the RFP would be written so narrowly as to favor Co-Alliance as the favored bidder. Felix VS at pages 3-4.

On June 15, the Town initially published the RFP with a July 1 deadline for responses. However, CKIN had discovered that the initial version improperly distributed confidential traffic information. The Town at CKIN's request recalled that version and issued a revised RFP.¹⁴ Four entities including Co-Alliance submitted bids.¹⁵ To the surprise of both CKIN and Co-Alliance, the Town selected as its "finalist", Lake State Railway ("Lake State"), a Michigan-based Class III short line railroad that had not previously expressed any interest in operating the line. While the RFP purported to require the Town to consider the transportation requirements of Co-Alliance and other freight shippers located on the Line now or in the future, the RFP process appeared to elevate the needs and desires of HVRM for access to the Line for its excursion service over those of freight customers. CKIN believes the RFP process was procedurally defective giving HVRM a significant role in the carrier evaluation and selection despite its obvious interest in the outcome of that process. CKIN further believes that the RFP process was faulty in that the selected carrier did not meet two or more of the RFP's selection criteria. Felix VS at page 4.

¹⁴ Issued on June 17, 2016. Relevant pages attached as Exhibit 6.

¹⁵ Co-Alliance's bid was not officially submitted jointly with CKIN, but it contemplated that CKIN would remain the line's operator if terms and conditions governing the use of the line by CKIN and HVRM could be agreed upon by CKIN, HVRM, and the Town.

Although these matters are beyond the Board's jurisdiction, CKIN believes that some discussion is necessary for the Board's understanding of this dispute.

On October 31, 2016, CKIN filed suit against the Town challenging the RFP process as improper and biased against its interest and contrary to the spirit of the Mediation Agreement. The suit alleges, among other things, that the Town allowed HVRM to dictate the carrier selection process putting its needs above those of common carrier rail service and the on-line freight customers. CKIN alleges in a second count of the suit that it is entitled to substantial damages from the Town upon non-renewal or termination of the 2004 Operating Agreement. 2004 Operating Agreement at section 10. CKIN is attaching as Exhibit A in a separate volume a copy of its complaint to give the Board a taste of the Town's and HVRM's underhanded actions which will likely continue in the Board proceedings.

III. SUMMARY OF ARGUMENT

Pursuant to 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, CKIN petitions the Board to reopen the 2004 OFA proceeding because of new evidence and changed circumstances that would have disqualified the Town's 2004 acquisition of the Line as eligible under 49 U.S.C. §10904(d)-(f). The new evidence or changed circumstances here consist of the fact that the real reason for the Town's 2004 acquisition was to provide HVRM, an exempt intrastate passenger excursion train operator, with track for its operations. Freight was merely a secondary consideration. These facts did not really become evident until a couple of years ago and have become even more apparent with the

current RFP process to select a new freight operator where the Town effectively ceded much of the decision-making to HVRM. Had the Town been forthright with the Board for the reason for its acquisition, CSX would likely have challenged that basis for the OFA and the Board would have rejected it.

Moreover, the Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to address uncertainty as to whether the Town's acquisition and ownership of the Line satisfies the criteria for an acquisition under the OFA requirements, the general rail transportation policies of 49 U.S.C. §10101, and the Board's precedent on limitations of common carrier rail service.

CKIN's Petition likely presents a case of first impression at the Board: whether the agency can rescind authority granted in an OFA proceeding and require the Line to be resold to the most appropriate owner. Congress enacted the OFA provisions for the purpose of continuing common carrier railroad service rather than other purposes such as historic preservation and excursion (as opposed to common carrier) passenger service. CKIN submits that the Board has the power to require the Town to sell the Line to CKIN where subsequent facts disclose that the offeror misrepresented the basis for its acquisition. Furthermore, the Board has the power to investigate violations of 49 U.S.C. Subtitle IV and prescribe appropriate relief.

The Board should also find that the Town's ownership and administration of the Line are contrary to the ICCTA rail transportation policy ("RTP") goals and agency precedent in the various respects. First the Town's

administration of the Line frustrates certain ICCTA rail transportation policy (“RTP”) goals such as safe and efficient transportation and honest and efficient management. Second, by allowing HVRM as an exempt intrastate passenger excursion train operator to have a significant role in both controlling the operation of the Line and involving HVRM in the RFP drafting and selection process the Town has violated the agency’s *State of Maine* doctrine.¹⁶ Finally, the Town’s conduct ignoring the needs of the principal shipper, Co-Alliance, is contrary to ICCTA policy.

The Board should reject as controversial any class exemption notice filed by Lake State for operating authority. In view of civil litigation instituted by CKIN against the Town as to its ability to terminate CKIN’s operations, the Town has no basis on which to grant operating rights to Lake State for the Line. Without an agreement, or a plan to reach an agreement, Lake State would not qualify for an exemption.

IV. ARGUMENT

Pursuant to 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, CKIN petitions the Board to reopen the 2004 OFA proceeding because of new evidence and changed circumstances as to the *real* motivation behind the Town’s 2004 acquisition. See *BNSF Ry.—Aban. Exemption—in King Cty., Wash.*, AB 6 (Sub-No. 290), slip op. at 2-3 (STB served Mar. 9, 2016)(“Under 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, the Board may reopen a proceeding because of ‘material error, new evidence, or substantially changed circumstances.’ The

¹⁶ Cited at page 13, *infra*.

alleged grounds must be sufficient to convince the Board that they would lead it to materially alter its prior decision.”)

That new evidence or changed circumstances here is the fact that the primary reason the Town acquired the Line was to provide mainline track for HVRM’s excursion service rather than freight service. This fact did not really become evident until recently and has become even more apparent with the RFP process where the Town effectively ceded much of the decision-making to HVRM. Had the Town been honest with its reason for acquisition, CSX would likely have challenged that basis for the OFA and the Board would have rejected it as ineligible under 49 U.S.C. §10904(d)-(f).

Moreover, the Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. It is appropriate to issue a declaratory order to address the uncertainty identified here as to whether the Town’s acquisition and ownership of the Line satisfies the OFA acquisition criteria and the RTP as well as the Board’s precedent on limitations of common carrier rail service.

A. The primary purpose of the offer financial assistance process is to facilitate the purchase of lines for continued common carrier rail service

CKIN’s Petition likely presents a case of first impression at the Board: whether the agency can rescind authority granted in an OFA proceeding due to a serious misrepresentation as to the primary purpose of the acquisition and require the Line to be resold to the most appropriate owner. CKIN believes that a careful reading of the law requires that it does. Congress’ intent in enacting

the offer of financial assistance provisions of 49 U.S.C. §10904 was to preserve rail lines threatened with abandonment by allowing “financially responsible persons” such as rail shippers, public agencies, or other railroads to acquire them for continued common carrier railroad service. While Board and Interstate Commerce Commission precedent make clear that offers need not be detailed, they must demonstrate that the offer is “bona fide and responsible” and the offeror is “financially responsible.” See *Conrail Abandonments Under NERSA*, 365 I.C.C. 472 (1981). Thirty-five years of OFA precedent require that the offeror show it is acquiring the line for continuing common carrier railroad service. While other purposes such as historic preservation and excursion passenger service are worthy, §10904 is not the appropriate acquisition procedure for pursuing such goals. Although excursion passenger service may be part of an overall plan for preserving a line through an OFA, common carrier rail service is the paramount consideration. *Roaring Fork Railroad Holding Authority- Abandonment Exemption-in Garfield, Eagle, and Pitkin Counties CO*, Docket No. AB-547X (STB served 5/21/1999, slip op. at 4-6). As the Board stated there:

“The OFA process is designed for the purpose of continuing to provide freight rail service....an offeror must be able to demonstrate that its OFA is for continued rail freight service.”

B. The primary purpose of the Town’s 2004 acquisition was to facilitate a passenger excursion service with freight as an afterthought

CKIN submits with this Petition the verified statement of its President Powell Felix. Initially and ostensibly, the Town represented that it was acquiring the Line for continued common carrier freight service when the real

motivation was excursion passenger service. Felix VS at pages 1-2 and 5. But starting in 2014, HVRM persuaded the Town to elevate its excursion passenger needs over the needs of Co-Alliance and the one other freight customer on the Line. Felix VS at page 2. So the Town's acknowledgement that passenger service was its priority is both a changed circumstance and new evidence warranting a reopening and review of the Town's 2004 OFA acquisition. Moreover, a new operating agreement ostensibly drafted by the Town in 2015 but prepared, CKIN believes, by HVRM would further elevate passenger over freight service. Felix VS at pages 2-3.

The draft operating agreement ("the 2015 Agreement") prepared by the Town and/or HVRM in 2015 provides further evidence that passenger service is still the primary motivation behind the Town's acquisition of the Line. Section 5 of that agreement states "NOR [the freight operator] and Town acknowledge that the establishment of passenger excursion activity on the Rail Line is a stated purpose and goal of the INDOT Agreement. NOR agrees that it will not impede or prevent the creation of additional, special, or regular passenger excursion activity by Museum on any portion of the Rail Line" [underscored in the Agreement]. Exhibit 7 at page 7.

As recently as June 1, 2016, the Town reaffirmed that excursion passenger service was the *primary* motivation for purchase of the Line. In a letter dated June 1, 2016,¹⁷ to various parties involved in this dispute, INDOT's counsel stated "the State of Indiana...provided funds for the acquisition of this

¹⁷ Attached as Exhibit 8.

line for the purposes of ensuring the continued operation of the excursion service operated by [HVRM]. As you know, the agreement providing federal aid funds for the purchase of the line also provided that freight service would be permitted on the corridor so long as such activity did not operate to the detriment of excursion services.” Again on June 17, 2016, the Town reiterated that passenger excursion service was still the primary motivation. According to the amended version of the Request for Proposals,

“The Town acquired the Rail Line in 2004 to help maintain a rail corridor for railway excursions from the Museum...”¹⁸

The fact that the Town did not disclose its true intentions demonstrates that its representations to the Board have been disingenuous. While CKIN agrees that historic preservation and excursion passenger service are worthwhile, they would have supported a public use acquisition but not an OFA. *Roaring Fork, supra*.

C. The Town’s ownership and administration of the Line are contrary to the ICCTA and agency precedent.

The Town’s ownership and administration of the Line are contrary to the ICCTA and agency precedent in the following respects. First the Town’s activities frustrate certain RTP goals. Second, HVRM’s deep participation in both the RFP drafting and selection process and in the day-to-day operation of the Line violate the policy articulated in the agency’s *State of Maine* ¹⁹ precedent. Moreover, the Town’s and HVRM’s conduct impede CKIN’s ability to

¹⁸ See, Amended Request for Proposal at page 2, attached as Exhibit 6.

¹⁹ *Maine, Department of Transportation—Acquisition & Operation Exemption—Maine Central Railroad*, 8 I.C.C.2d 835 (1991), cited at page 9, *supra*.

provide common carrier freight service to its customers contrary to the *State of Maine*.

Regarding the ICCTA's 15 RTP goals, the following are implicated:

- (3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;
- (8) to operate transportation facilities and equipment without detriment to the public health and safety;
- (9) to encourage honest and efficient management of railroads;
- (11) to encourage fair wages and safe and suitable working conditions in the railroad industry. 49 U.S.C. at §10101.

The Town has allowed or enabled HVRM, an exempt intrastate passenger excursion train operator that does not meet Federal Railroad Administration ("FRA") safety rules, to operate over freight trackage constituting part of the nation's freight network in violation of goals 3, 8, and 11. It also violates RTP goals 3 and 9 that address honest and efficient management generating adequate revenues by:

- Giving HVRM a role in selecting the new contract operator. According to the amended RFP, "[t]he Town will review the proposals and may invite selected members from [HVRM] the North Judson Railroad Committee, shippers on the Line, and/or the Town attorneys to participate in the review of some or all of the sections of the proposals."²⁰
- Allowing HVRM to dictate when freight operations over the Line may or may not be conducted.
- Allowing HVRM to dictate track maintenance standards higher than those required for local freight service.

²⁰ See Amended RFP at page 18, attached as Exhibit 6. To the best of CKIN's knowledge neither Co-Alliance nor the other on-line shipper has been permitted to review the RFP proposals despite Co-Alliance's request.

- Allowing the Town to take revenue sharing funds (i.e. rent for the use of the track) provided by CKIN and using them to subsidize HVRM operations.²⁰
- Allowing HVRM to dictate liability allocation standards that are more favorable to it than is the norm between freight and passenger rail effectively subsidizing HVRM's operations.

See Felix VS at pages 2-3; 6.

Second, during the past 30 years the ICC and the Board have developed a policy for identifying and allocating the responsibilities between noncarrier public agency rail line owners and common carrier tenants providing service over those lines. Under the agency's *State of Maine* doctrine an entity that acquires a common carrier rail line will not require agency authority for the line's acquisition and will not be subject to agency jurisdiction provided that (1) there is an agency licensed rail common carrier providing service over the line and (2) the owner lacks the ability to impede or interfere with the carrier's operations. Inasmuch as the Town acquired the Line pursuant to a Board OFA decision, it is subject to Board jurisdiction. *Compare Massachusetts Department of Transportation-Acquisition Exemption-Certain Assets of Pan Am Southern LLC*, FD 35943 (STB served December 4, 2015) and *Central Puget Sound Regional Transit Authority-Acquisition Exemption-Certain Assets of City of Tacoma in Pierce County, Wash.*, FD 35812 (STB served October 27, 2014)(both finding that those transactions as structured would not interfere with the

²⁰ Specifically Section 9 of the 2004 Operating Agreement states at pages 7-8 that all revenues derived by the Town as a direct result of the ownership of the ownership of Rail Line by Town shall be deposited in this Fund and shall not be used for Town purposes beyond preservation, maintenance of the Rail Line including administrative, insurance and legal expense, and *the benefit of the Museum*. [emphasis supplied].

ability of the common carrier railroad providing service over the lines post-closing) *with Wisconsin Department of Transportation—Petition for Declaratory Order—Rail Lines in Almena, Cameron, and Rice Lake, Barron County, Wis.* FD 35366, STB served Sept. 23, 2010 (where the Board concluded that the transaction documents were sufficiently ambiguous as to whether the common carrier railroad operator could provide service without interference from the public agency owner that it could not make a *State of Maine* finding to approve that acquisition).

Here the Town has delegated or abdicated much of its ownership and administration responsibility to HVRM, an exempt intrastate passenger excursion train operator. *See, Allied Erecting and Dismantling, Inc., and Allied Industrial Development Corporation—Petition for Declaratory Order—Rail Easements in Mahoning County, Ohio*, FD 35316 (STB served December 20, 2013)(“Once a party has incurred a common carrier obligation under 49 U.S.C. § 11101(a) to provide rail service on a particular line, that party may not relinquish its common carrier obligation simply by contracting away the state law property rights that it possesses (to the degree that they are necessary to provide the authorized rail service), as doing so would amount to an unauthorized abandonment or discontinuance under federal law.”). To that extent, the Town and the HVRM have both violated the ICCTA. Illustrative of the extent to which the Town and HVRM have interfered with CKIN’s common carrier service is this comment in INDOT’s letter dated June 1, 2016:

“As you know, the agreement providing federal aid funds for the purchase of the line also provided that freight service would be permitted on the corridor so long as such activity did not operate to the detriment of excursion services.” INDOT letter page 1, Exhibit 7.

The proposed operating agreement also identifies various services the rail carrier shall offer but limited by the caveat “provided that any such services shall be *pre-approved* [emphasis supplied] by Town and Museum.” The 2015 Agreement at 5, Exhibit 7. A review of the 2015 Agreement also documents that excursion service comes *first* with freight waiting in the siding. Simply stated, the restrictions that the Town and HVRM place on CKIN’s operations and those of any successor involve such extensive control of the freight carrier’s operations as to render *both* entities subject to Board jurisdiction. *See, Southern Pacific Transportation Company—Abandonment Exemption—Los Angeles County, CA*, 8 I.C.C.2d 495 (1992) where the ICC held:

“Here, however, SP’s right and ability to continue to provide service is far more restricted than the “permanent and unconditional easement” retained by the MEC in *State of Maine*. The Agreements place substantial limitations on SP’s ability to provide rail service.”

Just as the ICC found in *Southern Pacific*, the control that the Town and HVRM exercise here is so unreasonable that they are subject to the Board’s jurisdiction.

Mr. Felix documents in his statement many examples of how and when HVRM, as enabled by the Town’s Council, attempted to place the needs of the excursion service over CKIN’s ability to serve Co-Alliance. Felix VS at pages 2; 4-5.

State of Maine considerations aside, Board precedent holds that neither a carrier nor a private entity may interfere with a carrier's ability to fulfill its common carrier obligation. *Maumee & W. R.R. Corp—Pet. for Declaratory Order*, FD 34354, slip op. at 2 (STB served March 3, 2004) (stating that preemption may shield a railroad from state eminent domain laws where the effect of those laws is unreasonable interference with railroad operations). *See also, See JGB Props., LLC—Pet. for Declaratory Order*, FD 35817 (STB served May 22, 2015) (where the STB effectively recognized that one party may not cut off a shipper's access to common carrier rail service by finding that the ICCTA did not preempt state court litigation brought by the shipper against the landowner interfering with its rail service).

Finally, by elevating the needs and desires of its passenger excursion service operator over the needs for freight service, the Town has undermined the ICCTA and agency policy. Back in 2015 the Town acknowledged the importance of shipper needs to the Board's consideration of an incumbent railroad's service in an adverse discontinuance application. Citing *Cheatham County Rail Auth. Application and Petition for Adverse Discontinuance*, FD 32049, renumbered as AB-379X (ICC served Nov. 4, 1992), the Town stated that an adverse discontinuance application is normally granted unless it can be shown that the on-line shippers will be seriously harmed as a result of the rail service provided by the replacement rail operator. *See, Town's Reply to Motion to Compel* at 3 filed on May 20, 2015 in Docket AB-1232, copy attached as Ex.9. In *Cheatham*, the ICC found that replacing the incumbent's service

with that of a new carrier would not have a serious adverse impact on shippers and the community because the shippers either supported or were neutral about the change in operators.

Such is not the case here. As the Board will recall, Co-Alliance filed a letter on June 30, 2015,²¹ in response to the Town's currently dormant adverse discontinuance application. There it specifically identified the criteria that its serving short line railroad must meet, stated its satisfaction with CKIN's service, and expressed concern over the uncertainty surrounding this adverse discontinuance process. Co-Alliance was sufficiently concerned about its rail service going forward that it responded to the Town's RFP by submitting its own service proposal indicating that it was working with CKIN to develop terms and conditions for CKIN to remain as the line's operator. Instead the Town selected two semi-finalists (neither was Co-Alliance) and then narrowed that down to Lake State. So much for attention to shipper needs!

D. The ICCTA preempts any inconsistent contract obligations

CKIN understands that the Town and HVRM believe that any commitments contained in either the 2004 Operating Agreement or the proposed operating agreement would supersede the common carrier obligations of CKIN or any replacement operator. CKIN understands from its attorney that HVRM counsel boasted on a conference call amongst counsel in June 2016 that when CKIN signed the 2004 Operating Agreement, it accepted certain obligations in its relationship with HVRM (which was not a signatory to that

²¹ Attached as Exhibit 2.

agreement). These obligations included priority of passenger over freight service and an allocation of liability as between the rail freight operator and HVRM for liabilities that is more favorable to the museum than what is standard industry practice between common carrier freight and passenger carrier. Felix VS at pages 2; 6.

HVRM's boast is wrong in two respects. First, the Supplement to Mediation Agreement specifically states that the ICCTA's provisions preempt any provisions in the 2004 Operating Agreement to the extent they are inconsistent. Supplement Exhibit 5. Second, statements by HVRM's counsel demonstrates a misunderstanding of Board precedent. *GRC Holdings Corporation—Acquisition Exemption—Lines of Union Pacific Railroad Company*, FD 33537 (STB served Feb. 26, 2013) (“While the Board encourages privately negotiated agreements, contractual restrictions that unreasonably interfere with common carrier operations may be deemed void as contrary to public policy.”) and *Hanson Natural Resources Company—Non-Common Carrier Status—Petition for a Declaratory Order*, FD 32248 (ICC served Nov. 15, 1994) (“In addition, we find that once common carrier operations commence over all or part of this line, any contractual restrictions that unreasonably interfere with those common carrier operations will be deemed void as contrary to public policy.”)

- E. The Board retains the jurisdiction to rescind OFA authority improperly obtained and to order sale to a more appropriate entity

The fact that this matter appears to be a case of first impression should not prevent the Board from fashioning a remedy to prevent violations of the ICCTA and its policies. For example, in *CSX Abandonment Exemption in Allegany County, MD*, AB-55 Sub-no. 659 (STB served Dec. 30, 2010), the Board effectively allowed the reconveyance of a rail line acquired under an OFA by waiving a statutory restriction²² to allow the transfer of a line from the OFA purchaser to another party. The Board has also used its authority in both feeder line and exemption proceedings to require the transfer of a line from an incumbent, unsatisfactory owner to a more suitable owner or to revoke an exemption and require the purchaser of a rail line to reconvey it back to the seller. *Keokuk Junction Railway Company—Feeder Line Acquisition—Line of Toledo Peoria and Western Railway Corporation Between La Harpe and Hollis, IL*, FD 34335 (STB served Oct. 28, 2004), *aff'd sub nom. Toledo, Peoria & W. Ry. v. STB*, 462 F.3d 734, 736 n.2 (7th Cir. 2006)²³ and *SF&L Railway, Inc.—Acquisition and Operation Exemption Toledo, Peoria & Western Railway Corporation Between La Harpe and Peoria, IL*, FD 33995 (STB served Oct. 12, 2002)(exemption revoked and reconveyance ordered).

Moreover, the STB has historically taken actions to address ICCTA violations and can do so here. *Suffolk & Southern Rail Road, LLC—Lease and*

²² The Board waived the provision that prohibits the transfer of the line to another party before the lapse of the five year holding period.

²³ *Or. Int'l Port of Coos Bay—Feeder Line Application—Coos Bay Line of Cent. Or. & Pac. R.R.*, FD 35160 (STB served Aug. 8, 2008); *PYCO Indus.—Feeder Line Application—Lines of S. Plains Switching, Ltd.*, FD 34890, et al. (STB served Oct. 5, 2006).

Operation Exemption-Sill Road Realty, LLC, FD 35036 (STB served October 12, 2007)(ordered cessation of unauthorized construction; *Central Oregon & Pacific Railroad, Inc.—Coos Bay Rail Line*, FD 35130 (STB served April 11, 2008); and *Colorado Wheat Administrative Committee, et al v. V&S Railway LLC*, NOR 42140 (STB served October 31, 2014)(enjoined an unauthorized cessation of service and abandonment).

F. The Board should reject any class exemption filed by Lake State to operate the Line as controversial and therefore not suitable for an exemption

The Board has consistently ruled that the class exemption procedures of 49 CFR §1150.31 are not suitable for controversial cases. *See, e.g. The Burlington Northern and Santa Fe Railway Company-Acquisition and Operation Exemption-State of South Dakota*, FD 34645 (STB decided January 14, 2005)(“We will reject the exemption notice filed by BNSF because the transaction contemplated by BNSF (i.e., the transfer of the Core Lines from “modified certificate” status to § 10901 “railroad line” status) is not appropriate for consideration under the “class exemption” procedure that BNSF invoked when it filed its § 1150.31 exemption notice. That procedure is typically reserved for uncomplicated and noncontroversial cases. This case, however, is both complicated and controversial.”).²⁴

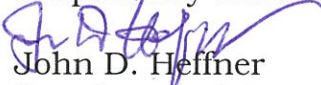
²⁴ See, also, *Saratoga and North Creek Railway, LLC—Operation Exemption—Tahawus Line*, FD 35559 (STB served May 14, 2012)(“As previously noted, the November Decision correctly stated that notices of exemption are intended to be used for routine and non-controversial cases, and that in cases where issues arise that cannot be resolved within the limited procedures afforded under the class exemption process, the Board may reject the notice.”); and *Rail Switching Services, Inc.—Operation Exemption—Pemiscot County Port Authority*, FD 35685 (STB served January 8, 2013)(“RSS’s notice of exemption will also be rejected because the record indicates

This case qualifies as controversial for many reasons. The Town's and HVRM's acquisition and administration of the Line present multiple issues for Board resolution starting with whether the Town's 2004 acquisition was eligible for approval initially. Moreover, as discussed above and in Mr. Felix's testimony, the Town's and HVRM's administration of the Line violate various ICCTA provisions and Board precedent. Finally, CKIN has initiated litigation in Indiana state court that could set aside the RFP process that awarded operation of the Line to Lake State. So granting operating authority to that carrier is far from certain and is premature. While Board operating authority is permissive, the Board has generally required that an entity seeking Board approval for its operations has either obtained the right to operate the Line or can be reasonably be expected to obtain that right. *Rail Switching Services, Inc.*, *supra* at 4 ("When a party files a verified notice of exemption under 49 C.F.R. part 1150 Subpart D, § 1150.33(c) requires "[a] statement that an agreement has been reached or details about when such an agreement will be reached." This rule contemplates that the party seeking authority to operate as a common carrier over the subject line either has, or is in the process of acquiring, an agreement with the underlying owner to provide that service. Without an agreement, or a plan to reach an agreement, a transaction would not qualify for an exemption under Subpart D"). That showing is missing here.

that this matter is controversial and not routine, and therefore the use of the Board's class exemption procedures is not appropriate in this case.").

V.
CONCLUSION

In conclusion CKIN asks the Board to reopen the OFA proceeding, revoke the Town's authority to acquire the Line, and to direct the Town to convey it to CKIN at a price to be established through Board-supervised negotiations. Alternatively, CKIN should institute a proceeding and investigation to determine whether the Town's ownership and administration of the Line satisfy ICCTA's rail transportation policy goals and the Board's common carrier precedent. Should Lake State seek operating authority by means of a class exemption, CKIN requests that the Board reject that exemption on the grounds that this matter is controversial.

Respectfully submitted,

John D. Heffner
Strasburger & Price, LLP
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Suite 717
Washington, D.C. 20036
(202) 742-8607

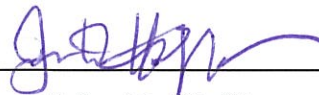
Filed: November 14, 2016

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that a copy of the foregoing Petition to Re-open and Petition for Declaratory Relief of Chesapeake and Indiana Railroad Company was served November 14, 2016 upon the following individuals by first-class mail.

Rachel Arndt
PETERSON WAGGONER & PERKINS, LLP
125 E. Tenth Street
Rochester, IN 46975

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street
Suite 1890
Chicago, IL 60604-1112



John D. Heffner

Dated: November 14, 2016

EXHIBIT 1

RAILROAD OPERATING AGREEMENT

This Agreement, made this 31ST day of August 2004 between the Incorporated Town of North Judson Indiana (Town) and the Chesapeake and Indiana Railroad, Incorporated (CKIN) witnesses that,

Whereas, Town is acquiring approximately thirty-three miles of railroad from CSX Transportation extending from Wellsboro, IN to LaCrosse, IN and from North Judson, IN to Malden, IN described under "Definitions", hereinafter "Rail Line", and,

Whereas, CKIN desires to operate the Rail Line for Town and Town has agreed to have CKIN operate the Rail Line under the terms and conditions set forth herein,

Now Therefore, in consideration of the mutual benefits derived from such an arrangement, the parties agree to be mutually bound as follows:

1. Definitions:

As used in this Agreement

- A) "Rail Line" means the ex-CSXT line of railroad described as the Western Region, Chicago Division, Wabash Subdivision, extending from Milepost CF 0.23 at LaCrosse to Milepost CF 15.23 at Wellsboro and from Milepost CI 212.55 at North Judson to Milepost CI 230.92 at Malden, a total distance of approximately 33.37

miles in LaPorte, Porter, and Starke Counties, Indiana, purchased by the Town for the purposes of Historic Rail Preservation and Operation.

- B) "INDOT Agreement" means the Agreement for Transportation Enhancement Funds between the Indiana Department of Transportation and the Town of North Judson, dated July 13, 2004.
- C) "Book Value" means the difference between initial asset cost and remaining undepreciated cost per IRS Depreciation Standards as outlined in IRS Publication 946 or its subsequent replacement, at MACRS standard asset life classifications, with depreciation calculated at a straight-line, half-year convention methodology, including specific railroad asset class designations for track and improvements.
- D) "Capital Improvement Fund" means a designated bank account held by the Town, for the sole purposes of providing capital and ongoing maintenance funds for track and property maintenance not provided per agreement by CKIN.
- E) "Museum" shall mean the Hoosier Valley Railroad Museum, Inc., North Judson, IN, a 501c(3) Nonprofit incorporated for preservation and educational purposes

2. Rail Line

Upon the closing of the purchase transaction with CSX Transportation, Town will own the property designated as the "Rail Line". The Rail Line shall include all land, track, bridges, structure and improvements thereon. CKIN shall have access to all parts of the Rail Line as may be required for common-carrier railroad freight operations. Title to the Rail Line shall at all times remain with Town and CKIN shall make no claim upon the Rail Line other than that expressly provided herein.

Title to all locomotives, rolling stock, vehicles, machinery, inventory, and equipment provided by CKIN for the operation of the Rail Line shall remain with CKIN and not become a part of the Rail Line.

3 Initial Inspection

CKIN and Town, with any designated representatives, shall perform an initial joint inspection of "Rail Line" within the first sixty days from initial operations, documenting existing conditions of assets, not limited to but including a detailed inventory of initial rail and tie condition, drainage, vegetation and bridge conditions. Specific attention shall be made as to tie, rail, and track geometry defects and conditions that prevent designation of FRA Class 1 or Class 2 passenger operations over the Rail Line from Milepost CI 223 (LaCrosse) to Milepost CI 212.55(N. Judson Museum Connection), and portions inclusive of the Wye connecting trackage at LaCrosse, and 1000' west of the point of switch (to Malden) and 1000' north of the point of switch (to Wellsboro). Portions of the Rail Line between that are found to be in current acceptable FRA class above "Excepted" shall be maintained by CKIN to not less than FRA 1 track condition between those points during the term of this Agreement. The results of the Initial Inspection defect inventory are to be made available to both parties within 30 days following the completion of the inspection.

4. Operation

CKIN shall exclusively provide all originating and terminating common-carrier rail freight service on the Rail Line. CKIN shall permit the Hoosier Valley

Railroad Museum to use the Rail Line in common with CKIN, consistent with safety, liability and regulatory considerations, for passenger excursion operations pursuant with Preservation and Educational goals. CKIN shall be solely responsible for all cost incurred in the operation of the Rail Line as outlined herein and CKIN shall not permit any vendor to lien or encumber either the Rail Line or Town. CKIN shall be entitled to all freight revenue derived from its operation on the Rail Line and Town shall make no claim upon such revenue unless herein permitted. CKIN shall provide rail service to all customers located along the Rail Line in such a manner as to accommodate those customer's needs. At a minimum, service will be provided by CKIN at least once per calendar week when so needed. CKIN shall enter into such agreements with connecting railroads as may be required to fulfill CKIN's common carrier obligations.

a) Additional Freight Activities and Notification

CKIN acknowledges that it is subject to INDOT Agreement, which states, in part, that increased freight operations may impact the use for the historic railroad excursions and would therefore require additional coordination with FWHHA Division Office. Therefore, CKIN shall notify Town, and Museum, in writing, of any pending operational change/increase of freight activity on the line that:

- 1) Operates over any portion of Rail Line either currently operating excursion services, or those services that are in written planning stages by Museum;

- 2) Would require additional operational coordination with Museum to avoid schedule or timing conflicts between freight and excursion passenger operations, or;
- 3) Would effectively exclude or prevent all passenger excursions on a practical basis on any portion of Rail Line, including those not currently in passenger service.

In the event that the Town and Museum find that no operational conflict exists, Town shall respond to CKIN with an approval letter not more than 30 days from written notice of freight operational changes.

Any Resolution or arbitration of conflicts under this section shall also be subject to initial review by FHWA Division Offices.

5. Historic Preservation

CKIN hereby acknowledges and accepts provisions of the INDOT Agreement, designating the Rail Line as an Historic Rail Corridor purchased under the provisions of Transportation Enhancement Funds. CKIN shall not modify, sell, or remove assets from the Rail Line that may be subject to restrictions designated by the Indiana State Historic Preservation office (DNR) under the terms of the INDOT Agreement. Removal, sale, modification, or improvement to the property other than regular maintenance purposes by CKIN shall be requested to the Town in writing, not less than 30 days prior to the requested change. Modifications to the property to enhance rail freight efficiency and safety that are

not found to be in conflict with State Historic Preservation goals are not to be unreasonably restricted by the Town or Museum.

6. Term

The term of this Agreement shall commence upon the date of the closing of the purchase from CSX transportation and shall continue for five consecutive calendar years there from. Upon the expiration of the first five-year term, this Agreement shall automatically be extended for a second consecutive five-year term unless either party has provided the other party with not less than six months written notice of its intention to terminate this Agreement after the first five-year term. The expiration of the term of this Agreement shall not serve to remove or limit any outstanding obligations incurred herein.

7. Regulatory Compliance

CKIN shall comply with all applicable local, state and federal laws and regulations in its operation of the Rail Line. Such compliance shall include, but not be limited to, the Federal Railroad Administration (FRA), Railroad Retirement Act, Federal Employers Liability Act, and the Surface Transportation Board. Town shall comply with such local, state and federal laws and regulations as may be applicable to its ownership of the Rail Line. Neither party shall knowingly permit any third party from encroaching upon, polluting, dumping upon or contaminating the Rail Line.

8. Maintenance

CKIN shall at its sole expense provide such Routine Maintenance to the Rail Line as defined herein. Routine Maintenance shall include those items identified on Schedule A, which is made a part of this Agreement. All materials and labor expended by CKIN in the performance of Routine Maintenance shall become a part of the Rail Line. CKIN shall perform all Routine Maintenance to no less than the FRA Class 1 track standard between Milepost CI 223 (LaCrosse) to Milepost CI 212.55 (N. Judson Museum Connection) and LaCrosse wye trackage as per Article 3 "Initial Inspection". Any portions within those limits found not to be in compliance with FRA Class 1 conditions at the time of Initial Inspection, and subsequently raised to FRA Class 1 as a result of any subsequent Capital Repairs performed by Town, shall be maintained to not less than FRA Class 1 during the terms of this Agreement.. The parties acknowledge that the Routine Maintenance contemplated herein is insufficient to keep the Rail Line in operating condition over an extended period of time. The parties agree to mutually cooperate to seek rehabilitation funding from State, Federal, and Local sources to assist in the ongoing maintenance of the Rail Line. CKIN shall supply the Town, within 30 days from the close of the calendar year, a detailed and itemized maintenance and rehabilitation plan for the following calendar year, outlining recommended capital and maintenance items with a cost estimate provided to maintain safe and efficient services to customers and Museum.

9. Capital Improvement and Maintenance Fund

The parties agree to mutually cooperate to seek rehabilitation funding and to establish a maintenance fund to support such rehabilitation funding and cover emergency repairs that may be beyond the scope of Routine Maintenance. Town shall establish and hold a Capital Improvement and Maintenance Fund, for the sole purpose of providing track, bridge, and property maintenance and improvements in addition to those provided by CKIN. All revenues derived by Town in direct result of the ownership of Rail Line by town shall be deposited in this Fund and not used for Town purposes beyond preservation and maintenance of the Rail Line. Revenues are defined, but not limited to, proceeds from Revenue Sharing, right-of-way occupations, rentals of Rail Property, and any fees for museum-related activity. The Capital Improvement Fund, may, at the discretion of the Town, be used for local-match purposes for any future State or Federal grant track-rehabilitation programs.

10. Capital Expenditures by CKIN

CKIN and Town agree that capital expenditures of a permanent and non-removable nature, may, at the option of CKIN, be made upon the Rail Line for the purposes of efficiency and safety in ongoing freight operations. Non-removable property improvements paid for wholly or in part by CKIN shall become the property of the Town, subject to any claim by CKIN as to remaining Book Value of such improvement at the non-renewal expiration or termination of this

Agreement by either party. Such remaining Book Value claim shall be calculated as follows:

- A) Cost of the Improvement shall be documented by receipts and/or submitted written evidence, including date of completion and/or service.
- B) Life of the Improvement shall be subject to IRS Definitions of Asset Life as outlined in IRS Publication 946 or its replacement, MACRS designation, specifically including rail assets.
- C) Book Value shall be the difference between Cost of the Improvement less Depreciation at straight-line, half-year convention, calculated to the end of the previous calendar prior to contract expiration or termination.

Remaining Book Value shall be paid to CKIN only in the event on non-renewal or termination of this Agreement, regardless of cause.

Utilities

CKIN, at its sole cost and expense, shall arrange for and obtain necessary water, electricity, and other utility services required for its use, including ongoing electrical supply to required crossing signal equipment. Town shall not be liable for any such services, or the suspension of such services.

12. Occupation of the Rail Line

Town shall have the exclusive right to all revenue generated from leases, licenses, easements and occupations located along the Rail Line, and to be deposited to the Capital Improvement Fund. . In the event Town elects to grant new leases, licenses or easements for occupations of the Rail Line, such new occupations

shall be subject to the reasonable review by CKIN for impact on the safe operation of the Rail Line. CKIN may charge and collect for its account, a one-time fee based upon complexity of analysis for review of such proposed occupations and CKIN may elect to impose minimum engineering requirements consistent with standard railroad practices on such occupations. CKIN Sample Fee Schedule for the period of this Agreement is Attachment B.

13. Taxes

Each party shall be exclusively responsible for any taxes associated with the revenue it derives through this Agreement. Town shall be responsible for all property taxes, if any, attributable to the ownership of the Rail Line. CKIN shall be responsible for any property taxes associated with the ownership of equipment used on the Rail Line. It is expressly understood that CKIN shall not be responsible for property taxes based on the ownership of the Rail Line and Town agrees to reasonably support CKIN in contesting any such assessment.

14. Insurance and Liability

CKIN shall at all times maintain in effect a general liability policy of limits not less than \$5,000,000 per occurrence. Such policy shall provide 30 days notice prior to termination and CKIN shall name Town as an additional insured on such policy. Failure of CKIN to maintain this general liability insurance shall constitute a material breach of this Agreement as contemplated in Item 26. CKIN shall be responsible for all liability for damage, injury or death resulting from its

operation of the Rail Line. CKIN shall save, defend and hold harmless, Town from such liability. Town shall be responsible for all liability for damage, injury or death resulting solely from its ownership of the real property associated with the Rail Line and not involved in the railroad operation. In the event of a liability claim where claimant names both CKIN and Town in a legal action, each party shall be exclusively responsible for its own court cost and legal fees. Neither party to this Agreement shall compromise or settle a liability claim on behalf of the other party without first obtaining the written consent of the other party. When so requested, each party to this Agreement shall assist the other party in taking such reasonable actions as may serve to mitigate such a claim of liability.

15. Revenue Sharing

CKIN agrees to contribute a portion of the freight revenue it derives from operation of the Rail Line to the Town based upon the following schedule.

Annual Carloads	Revenue Sharing per Carload
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Revenue Sharing shall apply to all loaded revenue cars originated or terminated by CKIN. On storage cars (empty revenue cars) each day a car is in revenue

storage shall count as one revenue storage day. Every count of 300 revenue storage days shall constitute one annual carload for Revenue Sharing calculations. CKIN shall provide Town a carload count not less than once per calendar quarter and shall make payment for the Revenue Sharing to Town within 30 days of the end of such calendar quarter. CKIN shall maintain such accurate records as may be required to audit such Revenue Sharing calculations and Town shall be granted confidential access to such records. Any partial calendar quarters shall be pro-rated bases on the annual carload numbers from the above schedule. It is the intentions of the parties that the Revenue Sharing paid by CKIN to Town is to build funds to be deposited to the Capital Improvement Fund. . However, CKIN shall have no claim as to the disposition of such Revenue Sharing funds held by the Town. In the event of a material change in freight traffic patterns on the Rail Line, the parties agree to negotiate in good faith to equitably revise the Revenue Sharing formula.

16. Passenger Excursions

CKIN and Town agree that the establishment of passenger excursion activity on the Rail Line is a stated purpose and goal of the INDOT Agreement, and CKIN shall not impede or prevent the creation of additional, special, or regular passenger excursion activity on portions or all of the Rail Line.

- a. Rental or maintenance fees for passenger activities conducted by the operator are to be paid to the Capital Improvement Fund.

- b. Passenger activities on the Rail Line are subject to FRA and other regulatory agencies, and operations shall be subject to requirements of operator safety, equipment standards, and designation of track class above Excepted status.
- c. Additional track inspections required exclusively for regular passenger operations shall be the responsibility of the Museum or its designees, through a cost-reimbursement to CKIN, or by CKIN approving a qualified Museum individual to perform the function.
- d. CKIN may, at its option, negotiate independently with the Museum, to provide locomotives, cars, and qualified crewmembers to provide excursion passenger services on an interim basis as a contractor for Museum, subject to written approval by Town as per satisfaction of proof of insurance of such activity.
- e. CKIN shall maintain the right of inspection of Museum owned, leased, borrowed, or guest equipment, proof of operator qualifications, training, and other regulatory requirements, prior to permitting excursion operations over the Rail Line. Equipment may, at the request of CKIN, be subject to prior engineering review to ensure that operation may not damage or unduly deteriorate Rail Line beyond comparable freight wear-and-tear standards and impacts.
- f. CKIN shall not conduct passenger operations to the general public without written permission from Museum, and without proof of Passenger

Liability insurance to the Town, at limits and provisions acceptable at that time.

- g. Museum reserves the right to designate, at its option, non-Museum passenger operators to provide excursion services, provided that they meet all other applicable regulatory, safety, equipment and financial obligations under this agreement to the satisfaction of CKIN and subject to all other provisions of this Agreement.
- h. Museum shall provide CKIN with not less than 30-calendar day written notice of intent to operate passenger excursions on a special or regularly scheduled basis , including designated equipment, milepost limits of the operation, and a list of qualified crewmembers. CKIN shall not refuse passenger excursions operations without just cause for reasons of safety or direct un-reimbursed financial loss to CKIN of an unavoidable nature.

17. Financial Reporting.

During the term of this Agreement, the CKIN shall, within sixty (60) days after the end of its fiscal year provide the Town with unaudited (preliminary) financial statement, and within one hundred five (105) days after the end of its fiscal year provide the Town either with a confidential, audited financial report, or a Certified copy of the applicable final corporate tax report and supporting schedules as filed with the Internal Revenue Service, applicable only to CKIN rail operations. In addition, CKIN shall supply Town with not less than a summary, annual, confidential carloading information of operations of the rail property by customer,

commodity, per-carload revenues, and interchanging carrier. Summary carload information of carloads moved, commodity, and customer shall be provided not less than quarterly, due not less than thirty (30) days after the close of the calendar quarter.

18. Trackage Rights and Payments

Town reserves the right to allow the use of Rail Line for freight services by connecting rail entities other than CKIN, if such an entity

- a) Does not either originate or terminate any freight activity on the Rail Line to the competition of CKIN;
- b) agrees in writing to indemnify CKIN and hold it harmless against any and all liability arising in any way whatsoever from the other entity(s) use of the Rail Property, other than normal track wear and tear addressed below;
- c) is a bona-fide carrier legally and financially capable of providing such services;
- d) Agrees that at all times, the operations of the entity shall be conducted in a manner which does not unduly interfere with CKIN operations and shall be in compliance with all dispatching orders, operating rules, and schedules of CKIN;
- e) Agrees to pay a users fee or trackage rights charge to the CKIN of not less than thirty-three cents per car mile for any car or locomotive; loaded or empty, subject to annual escalation of the Rail Cost Recovery Index published by the

Association Railroads for the normal wear and tear on Rail Property Track and other purposes.

- f) Does not conflict with provisions of this agreement in relationship to Historic Corridor Preservation, or conflict with approval on additional freight services subject to Town or INDOT Agreement review of Museum Operations.
- g) Does not require the investment by CKIN for improvement of designated track class, inspection standards, frequency, or additional insurance limitations to allow such service without compensation for such cost.

19. Force Majure

In the event of Acts of God, war, insurrection, civil disorder or labor actions, each party shall be reasonably relieved of its obligations herein, provided that the affected party exercises reasonable efforts to, within its ability, mitigate the scope and duration of such force majeure. A party claiming force majeure under this Agreement must expeditiously notify the other party of the force majeure situation and any actions being taken toward mitigation.

20. Notices

Any notices required or permitted under this Agreement shall be delivered by the most expeditious means and followed in writing by First Class US Mail as follows:

Chesapeake and Indiana Railroad
916 Vine Street

Connersville, IN 47331

Phone (765) 825-0316

Fax: (765) 825-1237\

Email: ibcx@webworks2000.net

Town of North Judson

Post Office Box 56

North Judson, IN 46366

Phone: (574) 896-3340

Fax: (574) 896-2153

21 Assignment

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. CKIN may not assign this Agreement without the written consent of Town, which shall not unreasonably withhold such consent.

22. No Waiver

No delay or omission to exercise any right or option accruing to either party upon any breach by the other party shall impair any such right or option or shall be construed to be waiver thereof, but any such right or option may be exercised from time to time as often as may be deemed necessary by the non-breaching party.

23. Severability

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of this agreement. All provisions of this Agreement shall be deemed severable.

24. No Abandonment.

The CKIN shall not apply for abandonment or discontinuance of service over any portion of the Rail Property without concurrence of the Town.

25. Termination.

Early termination of this Agreement shall be permitted in the event of an Act of God that renders the Rail Line in such condition that further operation is not feasible or an uncorrected material breach of the terms and conditions of this Agreement. In the event that one party believes the other party is in material breach of terms or conditions of this Agreement, the party claiming material breach shall provide not less than ten (10) days written notice of such material breach to the other party, which shall have ten consecutive days from such notice to remedy or correct such material breach. Only in the event such material breach is not remedied or corrected within the specified time may a party then elect to exercise early termination. Early termination shall not serve to eliminate or avoid any obligations incurred herein.

26. CKIN Default

Town may notify the CKIN in writing that the CKIN is in default of this agreement if the CKIN is not performing or complying with any condition of provision of this agreement including but not limited to the following:

- a) The CKIN fails to provide financial and carloading data under Article 18 “Financial Reporting”.
- b) The CKIN makes unauthorized property removals or alterations under Article 5 “Historic Preservation “
- c) The CKIN fails to maintain track as provided for in Article 8 “Maintenance”
- d) The CKIN withholds or fails to pay required Revenue Sharing payments as provided for in Article 15 “Revenue Sharing”
- e) The CKIN fails to acquire the required insurance, as provided in Article 14 “Insurance and Liability “, or the required insurance is canceled.
- f) The CKIN is insolvent or files, or consents to the filing against it of a petition for relief or reorganization in bankruptcy or insolvency under the laws of any jurisdiction.

27. Town Default

CKIN may notify Town in writing that Town is in default of this agreement if the Town is not performing or complying with any provision of this agreement including, but not limited to, the following:

- a) Town discloses to any person or persons not directly associated with Town, all or any portion of Confidential Documents that CKIN provides Town under this Agreement, excepting any information contained in such Confidential Documents as may already be in the public domain. It is incumbent upon Town to require that any outside professionals or consultants employed by Town are bound by this same confidentiality requirement.

- b) Town fails to assume liability for incidents associated solely with its ownership of the real property and not involving railroad operations.
- c) In the event Town fails to agree to the removal or termination of (to the maximum extent practicable) trackage rights operation granted by Town to another carrier whereby that carrier is in material breach of its agreed obligations to CKIN such as, but not limited to, failure to pay trackage rights fees as required.
- d) Town, or its assign, is found to be insolvent as evidenced by the appointment of an overseeing official by the State of Indiana or the State Courts to conduct the business of the Town or its assign.

28. Remedies for Default

In the event of a material breach of this Agreement, in addition to the right of termination provided in Item 26 above, each party shall have whatever remedies are available against the other party either at law or in equity.

29. Arbitration

In the event of a dispute between the parties arising from interpretation or implementation of this Agreement, the parties agree to submit such dispute between claim values of \$3000 and \$250,000 to the American Arbitration Association for resolution. The parties agree to be then bound by the findings of such arbitration and to refrain from taking any legal action contrary to such

findings. In the event of arbitration under this provision, each party shall bear its own cost of representation with the cost of the arbitration born equally between the parties or in such a manner as the arbiter shall deem appropriate. Claims in excess of \$250,000 may be submitted to Binding Arbitration by prior agreement of both parties on a case-by-case basis.

30. General Provisions

- A. Authority. Each party represents and warrants to the other party that it is fully authorized to enter into and be bound by this Agreement.
- B. Time. Time is of the essence of this Agreement.
- C. Governing Law. This Agreement shall be construed and enforced under the law of the State of Indiana.

In witness whereof, the parties have below indicated their acceptance of this Agreement by their authorized signature:

For CKIN:

For Town:

By: R Powell Felix

By: Guy A. Gardin

Title: President

Title: Pres. N.J. Town Council

ATTACHMENT A

Routine Maintenance

1. Vegetation Control, spraying the Rail Line at least annually, clearing of vegetation obstructions at grade crossings, removal of downed trees encroaching on the track, bush-hogging of accessible areas in towns. Not included, debris removal dumped by third parties.
2. Signal Maintenance, electrical power to existing signals, replacing batteries (including proper disposal), replacing light bulbs, lenses, gates, periodic testing, repair of damage caused by third parties, replacement of insulated joints, bond wires and above ground wiring. Not included: replacement of unusable heads, mast, cantilevers, electronic boards, bungalows, cabinets, gate mechanisms, underground wiring, or signal upgrades.
3. Grade Crossings, patching of surface with hot or cold mix, repair of broken rails, repair of crossing timbers, redriving lags, repair or replacement of cross-bucks. Not included: rebuilding of surface, replacement of track structure
4. Inspection, all FRA required track and bridge inspections, copies available for Town upon request, to designated track class.
5. Switches, inspection, lubrication and adjustment of all switches, replacement of loose or missing bolts and cotter pins, replacement of banners as required, respiking to gage, welding of points and frogs. Not included: replacement of

switch components (other than those available from Rail Line inventory),
replacement of switch timbers.

6. Derailments, rerailling of all derailed cars and lading, repairs to track to return it to the same FRA class as prior to the derailment, spare material from the Rail Line may be used in the replacement if available, if not available CKIN must purchase material at its expense
7. Joints and Broken Rails, repair all missing or failed bolts (for existing FRA class), replace broken joint bars from available Rail Line inventory, repair broken rails and pull-aparts (Rail Line inventory may be used). Not included: purchase of new or used joint bars if not available from Rail Line inventory
8. Ties and Gage Rods, respike ties to maintain FRA class, insert gage rods to hold gage. Maintain FRA Class 1 or better tie conditions between Milepost CI 223 (LaCrosse) to Milepost CI 212.55 (N. Judson Museum Connection) either as a result of initial inspection at or better than FRA 1, or subsequent to any Capital Rehab program elevating track condition to at or better than FRA 1. Not included: ties in excess of up to 100 ties per year and gage rods in excess of up to 20 per year (quantities exclude derailment repair, if any) on any excepted track portion of the railroad.
9. Plates and Anchors, position loose plates and redrive loose anchors from Rail Line inventory. Not included: purchase of plates, anchors and program anchoring.
10. Surface, spot jacking and tamping to meet FRA class track, using existing ballast. Not included: program surfacing, additional ballast.

11. Interlocking plants, inspection and repair as specified in agreements, including welding and bolts. Not included, replacement of obsolete equipment, new crossing diamonds.
12. Bridges, inspection, cleaning of drift, erosion control as practical, repair and replacement of existing walkway boards and handrails, preventing ballast erosion as practical. Not included: replacement of piles, sills, caps, bents, stringers, deck board, side boards, headwalls or other components.
13. Rehabilitation Program Preparation, preparing and submitting an annual track and bridge rehabilitation program, coordination of program administration including contractor monitoring

Railroad Operating Agreement

Amendment One

This Amendment One to the Railroad Operating Agreement dated August 31, 2004 between the Incorporated Town of North Judson (Town) and the Chesapeake and Indiana Railroad, Incorporated (CKIN) witnesses that the Agreement is hereby amended as follows:

Term

The initial term of the Agreement is extended to July 31, 2012. All other provisions of Item 6 (Term) remain in full force and effect.

Capital Expenditures by CKIN

In consideration of the extension of the term, CKIN hereby transfers all capital expenditure items made by CKIN from the commencement date of the Agreement through December 31, 2007 to the Town of North Judson. CKIN shall have no remaining claim for capital expenditures made prior to December 31, 2007. All capital expenditures incurred by CKIN after December 31, 2007 shall be subject to the provisions of Item 10 (Capital Expenditures by CKIN).

In witness whereof, the parties have below indicated their acceptance of the Amendment One to the Agreement by their authorized signature:

For CKIN:

By: R. Powell Field

Title: President

For Town:

By: Guy A. Gardin

Title: Pres. N.J. Town Bd.

Railroad Operating Agreement

Amendment Two

This Amendment Two to the Railroad Operating Agreement dated August 31, 2004 between the Incorporated Town of North Judson (Town) and the Chesapeake and Indiana Railroad, Incorporated (CKIN) witnesses that the Agreement is hereby amended as follows:

Term

The initial term of the Agreement is extended to December 31, 2015. Calculations under Item 10 (Revenue Sharing) of the Agreement for the period beginning August 1, 2015 through December 31, 2015 shall be performed on a prorated basis unless the term is subsequently extended beyond those dates. All other provisions of Item 6 (Term) remain in full force and effect.

IRSF Project 2010 Funding

CKIN hereby agrees to fund, solely with CKIN funds, up to Seventy Thousand Dollars (\$70,000.00) of the 2010 IRSF Track Project as part of the match money required by the IRSF Track Project. This IRSF additional funding shall exclude any Revenue Sharing amounts as well as any in-kind contributions of CKIN. The \$70,000.00 provided by CKIN under this Amendment Two shall be excluded from counting toward Capital Expenditures by CKIN per Item 10 of the Agreement.

Revenue Sharing

Effective with the calculation year beginning August 1, 2010, the Revenue Sharing schedule per Item 15 of the Agreement is hereby revised by a new Schedule A1 attached hereto and made a part of this Amendment Two.

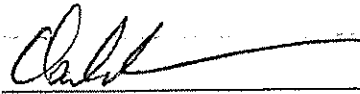
In witness whereof, the parties have below indicated their acceptance of the Amendment One to the Agreement by their authorized signature:

For CKIN:

By: 

Title: President

For Town:

By: 

Title: Town Council President.

Amendment Two

Schedule A1

Annual Carloads

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Revenue Sharing per Carload

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Initials CKIN: RPF

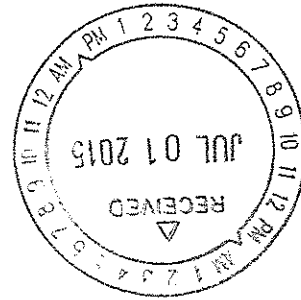
Initials Town: DA

EXHIBIT 2



238732

ENTERED
Office of Proceedings
July 1, 2015
Part of
Public Record



June 30, 2015

By UPS overnight mail

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

Re: Docket No. AB-1232, *Town of North Judson, Indiana – Adverse
Discontinuance of Service—in LaPorte, Porter and Starke Counties, IN*

Dear Ms. Brown:

Co-Alliance, LLP (“Co-Alliance”), the primary freight rail shipper¹ located along the railroad line that is the subject of the referenced proceeding, asks that this letter be added to the record for the purpose of providing the Board with additional factual information related to the filings in this proceeding to date..

I. Identity of Co-Alliance and General Background

Co-Alliance is an 8,000 member farmer-owned cooperative. It is the seventh largest privately held company in the state of Indiana, with over \$1.1 billion in revenue in 2013. Our partners have been serving the needs of mid-western farmers in Indiana, Michigan and Ohio since the 1920s. Co-Alliance owns two grain elevators located along the Rail Line described in the Petition for Waiver and Exemption in Conjunction with Prospective Application for Adverse Discontinuance of Service (“Petition”) filed in this docket by the Town of North Judson, Indiana. One elevator is located in the town of Union Mills, IN and the second in the town of Malden, IN. In 2014, the Union Mills and Malden grain elevators provided grain handling and grain marketing services to approximately 688 local farmers and landlords.

¹ There is one other shipper on the line that averages 20 rail cars per year.



The Union Mills facility, in addition to providing grain services, also is a bulk fertilizer hub for farmers in the region. Over the last decade, Co-Alliance has invested approximately \$20 million dollars in the facilities at Malden and Union Mills to increase storage capacity and efficiencies. Accordingly, any actions concerning freight rail operations over the Rail Line, and who provides those operations, directly affects Co-Alliance and the farmers we serve.

In 2003, when CSX originally planned to decommission this rail line, LaPorte County Co-Op (now a partner in Co-Alliance) financially participated in saving the rail line, and was the largest private contributor of funds for its purchase by the Town of North Judson in 2004, providing \$300,000. The Chesapeake and Indiana Railroad (CKIN) has been the line's operator since the acquisition. The CKIN primarily provides the means for Co-Alliance's grain commodities to be transported to interchanges with CSX Transportation and the Norfolk Southern Railway for distribution out to national and international markets. Co-Alliance has been pleased with the level of service we have received from CKIN and our relationship with this carrier.

II. The Rapid Growth in Grain Shipping on the Rail Line

The use of the Rail Line for freight rail transportation has increased rapidly since the town purchased it in 2004 and CKIN took over as the operator. The number of grain cars Co-Alliance has shipped utilizing CKIN has increased from 506 cars in 2005 to 3282 cars in 2014, a 600% increase in grain traffic in a period of nine (9) years. Based on an average of 3700 bushels per car, in 2014:

- 12,143,400 bushels of grain were railed out of the two grain elevators;
- At a conservative average price of \$4.50/per bushel, this equates to approximately \$54,645,300 in locally grown grain that farmers rely upon this rail line to get to market.

CKIN has applied for grants and made capital contributions and as a result has provided the following during Co-Alliance's expansive grain handling and marketing growth in the region:

- adding additional tracks;
- upgrading bridges to accommodate 286,000 lb. gross jumbo rail cars; and

- adding a junction spur greatly facilitating connection to the Norfolk Southern where previously facilities had been captive to CSX.

III. Future Needs of Co-Alliance and Local Farmers:

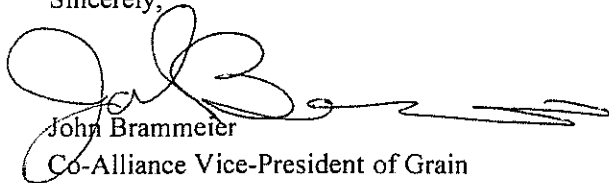
In order for Co-Alliance to continue to thrive in the grain industry, we must have a rail operator of the Rail Line that is knowledgeable about the rail transportation of grain and has an established reputation and experience in negotiating rates for agricultural commodities with the mainline carriers. As stated, Co-Alliance has been pleased with the expertise and rail service supplied by the CKIN since it began operating over the Rail Line in 2004. However, we understand that one outcome of this proceeding could be a change in rail operators over the Rail Line. We have two primary concerns with this potential outcome. First, many short line railroad operators have little to no expertise in agricultural economics and dealing with main line railroads. To not have this expertise in a short line operator if CKIN is replaced could have a very negative financial impact to the regional farming community. Small swings in freight prices when looking at over 12 million bushels of grain can have a devastating impact to the local farmer's bottom-line. Specifically, Co-Alliance and the farmers it serves need the following criteria in any short line railroad operator:

1. It is essential that the short line operator have existing and well-established relationships with the NS and CSX on grain commodity shipping.
2. A contractual commitment to service 7 days a week during daylight hours, essentially two work crew shifts available for both Union Mills and Malden when needed, this is especially essential in snow and ice conditions which comprises some of the busiest time for grain shipments.
3. A contractual commitment to two crews, one crew available for Malden and one crew available for Union Mills to move cars for loading and unloading.
4. An operator who will make available their locomotive mechanic to provide work on the Co-Alliance owned locomotive housed at Malden.
5. Proven history and experience in handling logistics of up to 270 cars at one time on a short line this size.
6. A contractual commitment for at least three power sources capable of pulling a fully loaded 90 jumbo car trains.
7. An operator who puts safety first and maintains the rail line to the standards required by regulators.

Co-Alliance's second concern is the potential uncertainty over the timing of any change in operators. It would be extremely detrimental to our business if any change even to an operator that met the foregoing criteria was not planned and conducted in a fashion that ensured that there are no disruptions in the service levels and exposure to markets we currently enjoy with the CKIN both during and after any transition to a new operator. Interruptions in service of any duration would be unacceptable. Moreover, grain markets are traded on a futures basis and Co-Alliance is already purchasing and selling grain at dates many months into the future. In order to be able to do that successfully, Co-Alliance must have a rail carrier that understands the complex economics of this market and can price its rates accordingly.

In conclusion, Co-Alliance has been satisfied with the service of CKIN over the Rail Line. The uncertainty associated with the possible termination of CKIN's service and the experience levels of the replacement rail carriers the Town of North Judson and The Hoosier Valley Railroad Museum have considered to date, along with uncertainties over the process and timing of any change, make it very difficult for Co-Alliance to plan for the future. Regardless of the outcome of this proceeding, it is vital to the continued success of Co-Alliance's grain business, and for the farmers in the region who rely upon the Union Mills and Malden grain elevators, that any railroad who operates over the Rail Line continue to provide the current high levels of service and expertise in grain transportation that Co-Alliance currently enjoys.

Sincerely,



John Brammeter
Co-Alliance Vice-President of Grain

Cc: Thomas P. McFarland, Esq.
John D. Heffner, Esq
(both by first class, U.S. mail and e-mail.

EXHIBIT 3

AGREEMENT for TRANSPORTATION ENHANCEMENT FUNDS

THIS AGREEMENT is made and entered this 13 day of July, 2004, between the State of Indiana, acting by and through the Indiana Department of Transportation (hereinafter referred to as "INDOT"), and the Town of North Judson (hereinafter referred to as "TOWN").

WITNESSETH

WHEREAS, pursuant to I.C. 8-23-8-6, the TOWN and INDOT are authorized to cooperate on projects; and

WHEREAS, the TOWN desires to purchase the CSX Transportation, Inc. ("CSXT") line of railroad in its Western Region, Chicago Division, Wabash Subdivision, extending from Milepost CF 0.63 at LaCrosse to Milepost CF 15.23 at Wellsboro and from Milepost CI 212.55 at North Judson to Milepost CI 230.92 at Malden, a total distance of approximately 32.97 miles, in LaPorte, Porter and Starke Counties, Indiana, traversing through United States Postal Service Zip Codes 46382, 46340, 46390, 46348, 46383 and 46366 (hereinafter referred to as "Corridor") for the purpose of Historic Rail Preservation and Operation; and

WHEREAS, INDOT will grant the TOWN Transportation Enhancement Funds to enable the TOWN to purchase the Corridor.

NOW THEREFORE, in consideration of the premises and the mutual agreements and covenants herein contained (the adequacy of which consideration as to each of the parties to this Agreement is hereby mutually acknowledged), and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, INDOT and the TOWN hereby covenant and agree as follows:

ARTICLE I

INDOT RESPONSIBILITIES

- A. INDOT shall grant to the TOWN \$1.5 million from Transportation Enhancement Funds for the purchase of the Corridor.

ARTICLE II

TOWN RESPONSIBILITIES

- A. TOWN shall be responsible for the remaining purchase price of the Corridor, which is estimated to be approximately \$500,000.00.
- B. TOWN shall be responsible for implementing service on the Corridor and maintaining the Corridor upon completion of the Corridor.
- * C. If, at any time, the TOWN should cease operation on the Corridor, the TOWN shall not be liable for repayment of the \$1.5 million grant, and ownership of the Corridor shall revert to INDOT. "Cease operation" is defined for the purpose of this Agreement as the TOWN no longer providing a public service on the Corridor, abandoning the Corridor pursuant to 49 USC 10903 and/or failure to maintain a running operation on the Corridor for any consecutive twelve month period. .
- D. The terms and conditions set forth in Paragraph "C" shall apply for a period of seventy-five (75) years from the date of execution of this Agreement.

ARTICLE III

- A. **Non-Discrimination.** Pursuant to I.C. 22-9-1-10, TOWN, or its contractor, shall not discriminate against any employee or applicant for employment, to be employed in

the performance of work under this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

B. Modification/Entire Agreement. This Agreement may be amended from time to time hereafter only in writing executed by INDOT and TOWN and submitted to the Attorney General of Indiana for approval as to form and legality. No verbal change, modification, or amendment shall be effective, unless in writing and signed by the parties and approved by the Attorney General. The provisions hereof constitute the entire agreement between the parties and supersede any verbal statements, representations or warranties stated or implied.

C. Conflict of Interest

As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

The individual executing this Contract;

An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or

Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.

The Department will not exercise its right of cancellation under section B above if the Contractor gives the Department an opinion by the Commission indicating that the existence of this contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of

2004-074

**2003-2004 INDIANA DEPARTMENT OF TRANSPORTATION
TRANSPORTATION ENHANCEMENT (TE) APPLICATION**

Applicant: **Hoosier Valley Railroad Museum Inc.**
Contact Person: **Mark W. Knebel** Phone: **574-946-6499** e-mail: **hvrmm@yahoo.com** Fax: _____
Descriptive Title of Project: **CSX Wabash Subdivision Corridor Preservation**

Address: **PO Box 75**
County: **Starke** City/Town: **North Judson 46366**
Urbanized Area: _____ MPO: _____
Local Public Agency (LPA): _____
Name(s) of Other Agencies Involved: **Starke County Development Foundation Inc.**
Contact Person: **Terry Kimmel** Phone: **574-772-5627**
Will this project involve a railroad crossing? Yes or No: **Yes**

PROJECT QUALIFYING ACTIVITIES: To be eligible, the project must fall under one of the following categories. Check the most appropriate activity and complete the attached category application form.. These categories are not listed in any order of priority.

1. Provision of facilities for pedestrians and bicycles.
2. Acquisition of scenic easements and scenic or historic sites.
3. Scenic or historic highway programs (including provision of tourist and welcome center facilities).
4. Landscaping and other scenic beautification.
5. Historic preservation.
6. Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).
- ☒ 7. Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bike trails).
8. Control and removal of outdoor advertising.
9. Archaeological planning and research.
10. Environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.
11. Provision of safety and educational activities for pedestrians and bicyclists.
12. Establishment of Transportation Museums.

Project Cost:

Planning Activities.	\$ _____
Project Development and Environmental Studies.	\$ _____
Engineering and Final Plans Preparation Work.	\$ _____
Right-of- Way Acquisition.	\$1,500,000.00 (estimated final cost under negotiation)
Construction.	\$ <u>500,000</u>
Construction Engineering and Inspection Activities.	\$ <u>30,000</u>
Other. (Describe)	\$ <u>10,000 (legal)</u>
TOTAL:	\$2,040,000

How will the project be funded?

INDOT Enhancement Funds \$1,000,000.00 + Local \$1,040,000.00 = Total \$(final cost, subject to change)

INDOT Enhancement Funds _____ 50 % + Local _____ 50% = 100%

PLEASE RESPOND TO ALL OF THE FOLLOWING ITEMS. ATTACHMENTS ARE O.K.

GENERAL DESCRIPTION OF PROJECT – Insert a brief description of the project. What type of project it is – i.e. construction (including installations, rehabs, removals or excavations), acquisitions or other end product activities (acquiring right-of-way, easements and sites or conducting research and programs)? If the project is to be in phases, explain and include timelines. Please be clear as to which phase(s) you are requesting funding. If there is some urgency due to imminent danger to the project/facility, please explain.

The project is the acquisition of a 32.97- mile railroad corridor with track, known as the CSX Wabash Subdivision. The railroad corridor is located within 3 northern Indiana counties; LaPorte, Porter, and Starke.

The railroad corridor is presently going through the exempted abandonment processes of the Surface Transportation Board and a final ruling on abandonment authority will be announced on or about February 20, 2004. Therefore this project is under imminent danger and of a high degree of urgency.

1. **PROJECT BACKGROUND** – Describe what has been done on the project to date such as the extent of public participation and community/organizational support, planning and design work, or the formation of special groups.

Describe what remains to be done before the project is ready to be funded and include any unresolved issues which may cause delays. If the project is connected to a previously approved TE project, provide a status report on the previously approved project.

Due to the short time span of the STB abandonment process, there hasn't been ample time to conduct extensive meetings in the multi-jurisdictional areas of this project. CSX filed for abandonment on November 3, 2003.

After researching and fact finding a first meeting on the project was conducted on December 23, 2003 at the office of the Starke County Development Director. Representatives of Hoosier Valley Railroad Museum, 17th District State Representative Steven Heim and a local businessman were in attendance for this meeting. A consultant from Railroad Industries Inc., was also contacted during this meeting in regards to the project.

A second meeting was conducted on January 17, 2004 at the LaPorte County Farm Bureau Co-op (LCFB) facility at Malden (US Hwy 49) - Porter County. Representatives from the co-op, HVRM, Starke County Development, Starke County Tourism, Bruder Fertilizer, Porter County Hwy, 17th District State Representative Steven Heim, and Gary Landrio of Stone Consulting & Design were in attendance. As a result of this meeting, LCFB retained consultant Gary Landrio to look into the project further and deal with CSX. Mark Knebel, HVRM Secretary was given approval to proceed working on a Transportation Enhancement Program application.

LCFB with facilities at Malden (Porter County) and Union Mills (LaPorte County) and Bruder Fertilizer of LaCrosse (LaPorte County) are the two agri-businesses who currently use rail service provided by the CSX rail line.

This project is not part of a previous TE project.

2. **PROJECT MAINTENANCE AND FUNDING ISSUES** – Explain the plan for maintaining the project including the source of funding, who will oversee long term maintenance and safety, and estimated annual maintenance expenditures. Describe the plan for providing the local match including the source of funding and assurances that the match will remain available. Explain what cash or in-kind funds have already been expended toward this project, if any. Also, on a separate sheet, include a detailed budget (itemized cost estimate) for your project. Phase the funding for large projects that request over \$1million in federal funds. Indicate any previously funded phase (s). Example: this application is requesting funding for phase 2 of 3 phases. Phase 1 was funded in calendar year 2000 with TEA 21 funds for \$1,000,000. The attached \$1,200,000 budget shows the details of Phase 2.”

A short line railroad operation will likely occur if the project is successful and the 33-mile railroad corridor is acquired. A Port Authority could eventually control the corridor, but in the immediate a short line owner/operator type entity will likely have long term maintenance and safety at hand.

If the project is successful and the 33-mile railroad corridor is acquired, freight operations would continue on the western and northern legs of the corridor, serving the current two customers on the rail line. Tourist train operations would eventually be developed over the 10-mile eastern leg between North Judson and LaCrosse. All the while seeking to establish freight business on the eastern leg in or about the North Judson vicinity. At least two established businesses in North Judson, which formerly used rail service provided by another railroad company, which discontinued and abandoned rail service, have expressed an interest in resuming rail shipments.

Maintenance funding sources for the project would derive from freight revenues and in part from tourist train operations. Average maintenance expense could range from \$1,500 - \$3,500 per mile/year. Applying for competitive grants from the Industrial Rail Service Fund and additionally from the Indiana Transportation Enhancement Program would be sought. Any and all types of revenue generating sources will be explored and implemented if deemed applicable.

Local match funds for this project to date will derive from:

- LaPorte County Farm Bureau Co-op
- Bruder Fertilizer
- Town of North Judson
- Hoosier Valley Railroad Museum

Less than \$1,000 has been spent on the project to date.

EXHIBIT 4

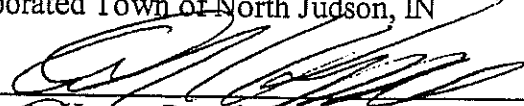
MEDIATION AGREEMENT

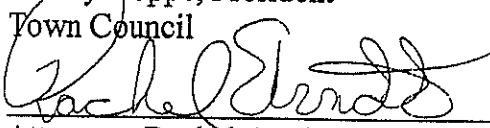
Parties appear this 9th day of December, 2015 for Mediation. The parties agree as follows:

- 1) The Town shall, within 60 days, of January 1, 2016, publish a Request for Proposals for a Lease Agreement wherein the Town will lease the rail line.
- 2) Request for Proposals will be due from interested Lessees within 30 days after publication.
- 3) The Town will select a Lessee and finalize a Lease Agreement 30 days after Requests for Proposals are received.
- 4) The parties agree that the current Operating Agreement dated August 31, 2004, including all extensions, shall be extended until May 15, 2016. The parties agree that there shall be no passenger service during the extension period in this Agreement.
 - a. In the event that a Lease Agreement is finalized between the Town and a Lessee, CKIN and the Town will voluntarily terminate the August 31, 2004 Operating Agreement. All parties will act in good faith.
- 5) The parties acknowledge and agree that this Mediation Agreement is contingent upon final approval of all parties, including a final vote accepting this Agreement by the full Board of the Town of North Judson at a Regular Meeting which is scheduled for December 21, 2015.
- 6) All revenue shares must be expended as per the Operating Agreement.

The Incorporated Town of North Judson, IN

By:


Wendy Hoppe, President
Town Council

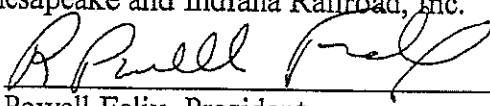

Attorney: Rachel Arndt

12/9/2015
Date

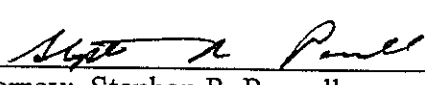
12-9-15
Date

The Chesapeake and Indiana Railroad, Inc.

By:


Powell Felix, President

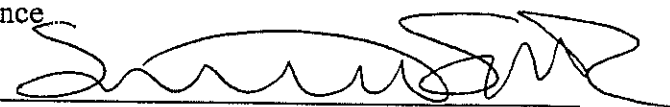
12-8-15
Date


Attorney: Stephen R. Pennell

12-9-15
Date

Co-Alliance

By:


Attorney: Elizabeth South

12-9-15
Date

#795566

EXHIBIT 5

SUPPLEMENT TO DECEMBER 9, 2015 MEDIATION AGREEMENT

The Town of North Judson ("The Town"), The Chesapeake and Indiana Railroad, Inc. ("CKIN"), and Co-Alliance (herein after collectively ("the Parties")) entered into a Mediation Agreement dated December 9, 2015, a copy of which is attached hereto. The Mediation Agreement in part extended the term of the August 31, 2004 Railroad Operating Agreement between The Town and CKIN to May 15, 2016, except that there would be no passenger service over any segment of the North Judson Line during the extended period.

Due to changes in circumstances since the execution of the Mediation Agreement on December 9, 2015, the Parties hereby agree to the following extension of the Mediation Agreement and further extension of the Railroad Operating Agreement, as further amended herein below:

1) The Mediation Agreement and term of the Railroad Operating Agreement are hereby extended up to and including August 15, 2016 ("the Extension).

2) The Town agreed to accept the Mediation Agreement at the meeting of The Town Board on December 21, 2015.

3) The Town has drafted and voted to accept a Request for Proposal ("RFP") which would authorize The Town to lease the rail line. In order to assist The Town with the RFP process, The Town has retained the services of an Appraiser and has hired Mr. David Gogol to assist The Town with the RFP process.

4) The Town intends for the RFP process to be completed within 60 to 90 days from RFP issuance, and CKIN agrees to cooperate with the Town during the RFP process. The Town's expectation is to select a lessee and finalize a lease agreement within 30 days after the completion of the RFP process, but no later than August 15, 2016.

5) CKIN filed a letter with the Federal Railroad Administration ("FRA") on or about May 3, 2016 advising that CKIN is no longer responsible for the North Judson to English Lake segment of the rail line under 49 C.F.R. Part 213. The Town and CKIN recognize and agree that The Town shall be responsible for the inspection and maintenance of that segment of the rail line under 49 C.F.R. Part 213 after May 3, 2016. If The Town permits the Hoosier Valley Rail Museum ("HVRM") to operate passenger service over that segment of the line after May 3, 2016, The Town will be solely responsible for any violations of FRA rules.

6) The Town and CKIN agree that the Railroad Operating Agreement is amended by this Supplement to the Mediation Agreement to reflect the changes in responsibilities set forth in subparagraph (5).

7) During the extension period (May 15 to August 15), the Town agrees that it will not permit the HVRM to operate any passenger service outside the North Judson to English Lake segment except with the written consent of both The Town and CKIN at their sole discretion. The Town further agrees that it will require that any requests for operation of such passenger service by HVRM during the extension period must be submitted to The Town and

CKIN in writing at least 30 days in advance of the proposed trip. Only two requests will be entertained.

8) In the event that a Lease Agreement is finalized between the Town and a Lessee, CKIN and the Town will voluntarily terminate the Railroad Operating Agreement. All parties will act in good faith.

9) To the extent that the Mediation Agreement, the Railroad Operating Agreement, any Agreements between The Town and INDOT, and any Agreements between The Town and HVRM conflict with the provisions of the ICC Termination Act ("ICCTA"), the ICCTA will preempt those Agreements and State or local law.

10) The Parties agree that the Indiana Courts will have jurisdiction to enforce this Mediation Agreement, and that any interpretation of this Agreement shall be in accordance with Indiana law.

11) This Supplement to the Mediation Agreement shall become effective upon approval of The Town's Council and execution by CKIN and Co-Alliance.

The Incorporated Town of North Judson, IN

By:

Wendy Hoppe, President
Town Council

Date

Attorney: Rachel Arndt

Date

The Chesapeake and Indiana Railroad, Inc.

By:

R Powell Felix
Powell Felix, President

5-12-16
Date

Attorney: Stephen R. Pennell

Date

Co-Alliance

By:

Attorney: Elizabeth South

Date

CKIN in writing at least 30 days in advance of the proposed trip. Only two requests will be entertained.

8) In the event that a Lease Agreement is finalized between the Town and a Lessee, CKIN and the Town will voluntarily terminate the Railroad Operating Agreement. All parties will act in good faith.

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The Incorporated Town of North Judson, IN

By:

Wendy Hoppe, President
Town Council

Date

Attorney: Rachel Arndt

Date

The Chesapeake and Indiana Railroad, Inc.

By:

Powell Felix, President

Date

Attorney: Stephen R. Pennell

Date

Co-Alliance

By:



Attorney: Elizabeth South

5/11/2016
Date

CKIN in writing at least 30 days in advance of the proposed trip. Only two requests will be entertained.

8) In the event that a Lease Agreement is finalized between the Town and a Lessee, CKIN and the Town will voluntarily terminate the Railroad Operating Agreement. All parties will act in good faith.

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10) The Parties agree that the Indiana Courts will have jurisdiction to enforce this Mediation Agreement, and that any interpretation of this Agreement shall be in accordance with Indiana law.

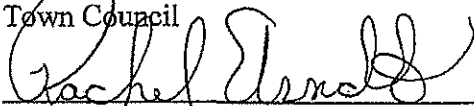
11) This Supplement to the Mediation Agreement shall become effective upon approval of The Town's Council and execution by CKIN and Co-Alliance.

The Incorporated Town of North Judson, IN

By:


Wendy Hoppe, President
Town Council

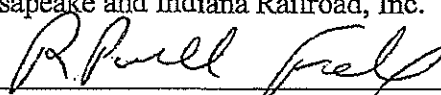
May 12, 2016
Date


Attorney: Rachel Arndt

May 13, 2016
Date

The Chesapeake and Indiana Railroad, Inc.

By:


Powell Felix, President

5-12-16
Date

Attorney: Stephen R. Pennell

Date

Co-Alliance

By:

Attorney: Elizabeth South

Date

EXHIBIT 6

TOWN OF NORTH JUDSON SHORTLINE RAILROAD REQUEST FOR PROPOSALS (RFP)

June 15, 2016

AMENDED June 17, 2016

Pursuant to Section 3.5.2 of the RFP, the Town is amending the below RFP and is redistributing it to all known parties of interest and posting it for public inspection. This amended RFP supersedes any previous version and replaces all previous versions in totality.

1.0 INTRODUCTION

Through the issuance of this Request for Proposals (“RFP”) the Town of Judson (the “Town” or “North Judson”) is hereby soliciting competitive proposals from potential entities capable of entering into a lease of the Rail Line (defined below) from the Town (the “Lease Transaction”), while promoting economic development in the Town and surrounding counties. This RFP is not a solicitation for proposals to privatize the Rail Line, as the Town will retain ownership of the Rail Line. But rather, the Town seeks to benefit from an entity that can better leverage the private sector’s railroad and real estate experience, economic and community development experience and capital access in partnership with the Town. In addition, the Town desires to improve the speed and efficiency of communication between the operator of the Rail Line and the Town.

The selected lessee (the “Lessee”) will be expected to collaborate with the Town as well as the Counties of Starke, Porter and LaPorte, counties through which the Rail Line passes. In addition, the Rail Line currently provides rail services that benefit the Hoosier Valley Railroad Museum (the “Museum”) and on-line shippers, Co-Alliance, LLP (“Co-Alliance”) and Kova Ag Products (“Kova”). Finally, the Rail Line is operated under a Railroad Operating Agreement between the Town and Chesapeake and Indiana Railroad, Incorporated (CKIN), dated as of August 31, 2004 (the “Operating Agreement”). Respondents may work with any rail line operator and the selected Lessee will have the right to negotiate the terms of any necessary contract as it deems appropriate and in the best interest of the Town.

Each respondent should submit a plan to lease the Rail Line pursuant to a lease agreement with a term up to ten (10) years and that complies with any directive by the Surface Transportation Board (STB)(the “Lease Agreement”) and coordinate with the operator of the Rail Line, to create and execute economic development strategies using the Rail Line that benefit the Town and surrounding counties. A respondent should highlight in its proposal its experience leasing railroad-related real estate as well as creating and executing economic development solutions that are innovative, creative and feasible.

2.0 OVERVIEW

2.1. Rail Line History

The former CSX Transportation's Wabash Subdivision begins at or near Wellsboro Junction in Union Mills (Milepost 15.23) and runs southwest to LaCrosse (Milepost 0.63), at North Judson the rail line begins at (Milepost 212.55 and runs northwest to Malden (Milepost 230.92), a total distance of approximately 32.97 miles in LaPorte, Porter, and Starke Counties, IN ("the Rail Line"). This line connects to CSX's Pittsburgh – Chicago main line at Wellsboro, and *Norfolk Southern's* (NS) Buffalo – Ft Wayne- Chicago main line at Thomaston. Both interchanges are located in LaPorte County, Indiana.

The Pere Marquette Railway Co. built the section of line from Wellsboro to LaCrosse. It was opened to traffic in August 1884. The section from North Judson to Malden was originally part of the Chesapeake & Ohio of Indiana Railway Co., Cincinnati to Chicago. It was opened in 1907. The sections east and west of this operating section were abandoned. The section between Malden and Chicago was abandoned in 1982, while the section east of North Judson was abandoned in 1987.

The operating sections were both acquired by the Chesapeake & Ohio Railway Co. These lines ultimately became part of the Chessie System in 1982 and then Chessie and seaboard merged to form CSX Transportation.

The Rail Line primarily serves the agricultural industries in Wellsboro, LaCrosse and Malden. The Museum at North Judson conducts railway heritage operations, including passenger trains on the Rail Line; primarily between North Judson and LaCrosse. Since 2006 to present day, the Museum has carried 39,000 tourist passengers on mostly Saturday excursions. Passenger excursions are an integral part of the Rail Line and any successful Lease Transaction is expected to support passenger excursions and work with the Museum to promote these excursions as well as the historical preservation mission of the Museum.

The Town acquired the Rail Line in 2004 to help maintain a rail corridor for railway excursions from the Museum and has been the owner of the Rail Line. CKIN has been the contract operator of the Rail Line since 2004.

2.2. Rail Car Traffic Information

This section provides pertinent historical information for all prospective respondents for purposes of identifying potential business opportunities on the Rail Line.

Rail Car Traffic Characteristics

Four years of traffic volume data on the Rail Line.

	2015	2014	2013	2012
Total Cars	4,312	3282	3212	3646

Proposals by corporations must be executed in the corporate name by an individual authorized to sign. The corporate address must be shown below the signature. Proposals by partnerships must include the official business address of the partnership and the state/country of organization must be shown below the signature. Proposals by a joint venture must be similarly executed by all joint venture partners. Unsigned proposals will be considered non-responsive.

4.4 Statutory Requirements

This RFP is intended to comply with IND. CODE § 36-1-11-12, IND. CODE § 5-3-1 and other applicable federal and state laws. Pursuant to Ind. Code § 36-1-11-12, the Town is authorized to use this RFP process. ~~Indiana law prohibits the Town from leasing the Rail Line to any "ineligible person," defined in IND. CODE § 36-1-11-16 as a person who owes delinquent taxes, special assessments, penalties, interest or costs directly attributable to a prior tax sale on a tract of real property listed on the delinquent list under IND. CODE § 6-1.1-24-1, or a person who is an agent of an ineligible person.~~ All eligible respondents must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals.

4.5 Security

The Town may require that the Lessee provide security for performance of its obligations under the Lease Agreement, including through a guaranty, letter of credit and/or an operation and performance bond. Respondent shall demonstrate its ability to obtain an instrument of security sufficient to cover a ten (10)-year lease arrangement should it be selected as the Lessee.

5.0. CRITERIA FOR SELECTION

5.1. Overview of Selection Process

The Town will review the proposals and may invite selected members from the Museum, the North Judson Railroad Committee, shippers on the line and/or the Town attorneys to participate in the review of some or all of the sections of the proposals. Respondents may be asked to submit more detailed written information regarding operational and business planning as well as participate in an interview, or be available for a physical inspection of the property at the convenience of the Town. The chosen respondent will be invited to enter into a Lease Agreement with the Town of North Judson.

5.2. Ranking of Selection Criteria

The categories of the Selection Criteria and their relative weight are as follows:

<u>Issue/section</u>	<u>Pct.</u>
Qualifications of Respondent*	30%
Economic and Community Development	30%
Operations	20%

EXHIBIT 7

RAILROAD OPERATING AGREEMENT

This Agreement, made this ____ day of *****, 201* between the Incorporated Town of North Judson Indiana (Town), Hoosier Valley Railroad Museum Inc., (Museum), and the ((insert name)*New Operator Railroad*), Incorporated (*NOR*) witnesses that,

Whereas, Town is owner of approximately thirty-three miles of railroad extending from Wellsboro, IN to LaCrosse, IN and from North Judson, IN to Malden, IN described under “Definitions”, hereinafter “Rail Line”, and,

Whereas, NOR desires to operate the Rail Line for Town and Town has agreed to have NOR operate the Rail Line under the terms and conditions set forth herein,

Now Therefore, in consideration of the mutual benefits derived from such an arrangement, the parties agree to be mutually bound as follows:

1. Definitions:

As used in this Agreement

- A) “Rail Line” means the ex-CSXT line of railroad described as the Western Region, Chicago Division, Wabash Subdivision, extending from Milepost CF 0.23 at LaCrosse to Milepost CF 15.23 at Wellsboro and from Milepost CI 212.55 at North Judson to Milepost CI 230.92 at Malden, a total distance of approximately 33.37

miles in LaPorte, Porter, and Starke Counties, Indiana, purchased by the Town for the purposes of Historic Rail Preservation and Operation.

- B) “INDOT Agreement” means the Agreement for Transportation Enhancement Funds between the Indiana Department of Transportation and the Town of North Judson, dated July 22, 2004.
- C) “Book Value” means the difference between initial asset cost and remaining undepreciated cost per IRS Depreciation Standards as outlined in IRS Publication 946 or its subsequent replacement, at Modified Accelerated Cost Recovery System (MACRS) standard asset life classifications, with depreciation calculated at a straight-line, half-year convention methodology, including specific railroad asset class designations for track and improvements.
- D) “Railroad Fund” means a designated bank account held by the Town, for the sole purposes of providing capital and ongoing maintenance funds for track and property maintenance at the discretion of the Town council, and for the benefit of the transportation railroad museum.
- E) “Museum” shall mean the Hoosier Valley Railroad Museum, Inc., North Judson, IN, a 501(c)(3) Nonprofit incorporated for preservation and educational purposes.

2. Rail Line

Town owns the property designated as the “Rail Line”. The Rail Line includes all land, track, bridges, structures and improvements thereon. NOR shall have access to all parts of the Rail Line as may be required for common-carrier railroad freight operations. Title to the Rail Line shall at all times remain with Town and NOR

shall make no claim of ownership of the Rail Line other than that expressly provided herein. Title to all locomotives, rolling stock, vehicles, machinery, inventory, and equipment provided by NOR for the operation of the Rail Line shall remain with NOR and not become a part of the Rail Line.

3 Initial Inspection

NOR and Town, with any designated representatives, shall perform an initial joint inspection of “Rail Line” within the first sixty days from initial operations, documenting existing conditions of assets, not limited to but including a detailed inventory of initial rail and tie condition, drainage, vegetation and bridge conditions. (referred to as the Initial Inspection defect inventory).

- a) Specific attention shall be made as to tie, rail, and track geometry defects and conditions that would prevent designation of Federal Railroad Administration (FRA) track Class I or Class II passenger operations over the Rail Line from Milepost CI 223 (LaCrosse) to Milepost CI 212.55(N. Judson Museum Connection), and portions inclusive of the wye connecting trackage at LaCrosse, and 1000’ west of the point of switch (to Malden) and 1000’ north of the point of switch (to Wellsboro). Portions of the Rail Line between those points that are found to not conform to FRA Class I track safety standards, shall be corrected by NOR to conform to such standards within (120) days of the initial effective date of this Agreement, and thereafter shall be maintained to not less than FRA Class I track safety standards during the Term of this Agreement.

The results of the Initial Inspection defect inventory are to be made available to both parties within (30) days following the completion of the inspection.

4. Operations

NOR shall exclusively provide all originating and terminating common-carrier rail freight service on the Rail Line. NOR shall permit the Hoosier Valley Railroad Museum to use the Rail Line in common with NOR, consistent with safety, liability and regulatory considerations, for passenger excursion operations, and other Museum operations such as, but not limited to: engineer-for-an-hour, motor car outings, photo freights, and exhibit trains, consistent with Preservation and Educational goals. NOR shall permit the Museum to use the Rail Line in common for Museum related switching moves, car handling, and car storage. The parties shall reasonably cooperate with each other on the location of stored railcars on the Rail Line.

NOR shall be solely responsible for all cost incurred in the operation and maintenance of the Rail Line as outlined herein and NOR shall not permit any vendor to lien or encumber either the Rail Line or Town. NOR shall be entitled to all freight revenue derived from its operation on the Rail Line and Town shall make no claim to such revenue unless herein permitted. NOR shall provide rail service to all customers located along the Rail Line, including the Museum, in such a manner as to accommodate their needs. At a minimum, service will be provided by NOR at least once per calendar week when so needed. NOR shall enter into such agreements with connecting railroads as may be required to fulfill

NOR's common carrier obligations. NOR shall keep open and maintain the interchanges with the current connecting railroads; CSX and Norfolk Southern. If both the Town and NOR agree, additional interchanges with other connecting railroads shall be established and maintained to the benefit of the Rail Line.

During the Term of this Agreement, NOR agrees to perform safe, consistent and reliable rail services, including but not limited to timely response to derailments, all of which services shall be consistent with the provision of quality rail service as recognized in the rail industry, to existing and potential customers located on the Rail Line and assist in developing economic growth along the Rail Line, provided that such services shall be increased/modified as the volume of rail traffic on the Rail Line changes. All fees charged to users of services offered by NOR shall be reasonably competitive with similar services offered by rail service providers in the rail service industry. NOR shall be required to maintain and periodically demonstrate adequate working capital and capex reserve funding to operate efficiently.

NOR shall provide rail services as required by each individual customer located on the Rail Line. NOR shall use its best commercial efforts to develop the Rail Line for rail related services, which may include, but not be limited to railcar switching, transloading, bulk storage, warehouse and distribution services, container services, car cleaning, car storage, car repair, and locomotive repairs and remanufacture, and any other rail related services, provided that any such services shall be pre-approved by Town and Museum.

NOR shall maintain at least two locomotives at the Rail Line with a reserve locomotive available to insure service to customers is maintained. NOR shall also maintain adequate equipment and staffing consisting of at least one full operations crew and a general manager or such personnel as reasonably determined by NOR in order to maintain quality rail service.

NOR shall operate the Rail Line under Yard Limits, unless mutually agreeable by Town and Museum to operate segments, or the Rail Line under other authority/modes that can accommodate the Museum and NOR.

a) Additional Freight Activities and Notification

NOR acknowledges that it is subject to INDOT Agreement, which states, in part, that increased freight operations may impact use of the Rail Line for historic railroad excursions and would therefore require additional coordination with Federal Highway Administration Division Office (FHWA). Therefore, NOR shall notify Town, and Museum, in writing, of any pending operational change/increase of freight activity on the line that:

- 1) Would take place over any portion of the Rail Line on which excursion services are currently being provided, or are planned in writing by Museum; or
- 2) Would require additional operational coordination with Museum to avoid schedule or timing conflicts between freight and excursion passenger operations, or;

- 3) Would effectively exclude or prevent all passenger excursions on a practical basis on any portion of Rail Line, including a portion not currently in passenger service.

In the event that the Town and Museum find that no operational conflict would exist, Town shall respond to NOR with an approval letter not more than 30-days from written notice of freight operational changes.

The Division Office of FHWA shall be entitled to review any dispute or conflict between the Museum and NOR before such dispute is resolved or such conflict is litigated.

5. Passenger Excursions

NOR and Town acknowledge that the establishment of passenger excursion activity on the Rail Line is a stated purpose and goal of the INDOT Agreement. NOR agrees that it will not impede or prevent the creation of additional, special, or regular passenger excursion activity by Museum on any portion of the Rail Line.

- a. Passenger activities on the Rail Line are subject to rules and regulations of the FRA and other agencies having regulatory authority. Operations shall comply with safety and equipment standards, and at least FRA Class I track standards.
- b. Additional track inspections required exclusively for regular passenger operations shall be the responsibility of NOR or its designees, or by NOR

- approving a qualified Museum individual approved by NOR to perform such inspections.
- c. NOR may, at its option, negotiate independently with the Museum, to provide locomotives, cars, and qualified crew members for excursion passenger services on an interim basis as a contractor for Museum, provided that Town may require proof of adequate insurance for excursion passenger services as a condition to Town's approval of NOR's provision of such services.
 - d. NOR shall at all times have the right to inspect equipment owned, leased, or borrowed by Museum and the right to require proof of operator qualifications, training, and other regulatory requirements, prior to permitting excursion operations over the Rail Line. Equipment may, at the request of NOR, be subject to prior engineering review to ensure that operation may not damage or unduly deteriorate Rail Line beyond comparable freight wear-and-tear standards and impacts.
 - e. NOR shall not conduct passenger operations for the general public without written permission from Museum, and without proof of adequate Liability Insurance for passenger operations.
 - f. Museum reserves the right to designate, at its option, non-Museum passenger operators to provide excursion services, provided that they meet all applicable regulatory, safety, equipment and financial obligations under this Agreement to the satisfaction of NOR and subject to all other provisions of this Agreement.

- g. Museum shall provide NOR with not less than (30) calendar days' written notice of intent to operate passenger excursions on a special or regularly scheduled basis, including designated equipment, milepost limits of the operation, and a list of qualified crewmembers. NOR shall not refuse to permit Museum to perform passenger excursion operations without just cause, i.e., for reasons of safety.
- h. Museum will provide for the training and certification of its own operating crews in conformity with the requirements of the Federal Railroad Administration. Museum reserves the right to participate in any training and safety activities conducted by NOR and shall reimburse NOR for any additional expense resulting from Museum's participation in such activities.

6. Historic Preservation

NOR hereby acknowledges and accepts provisions of the INDOT Agreement, designating the Rail Line as a Historic Rail Corridor purchased with Transportation Enhancement Funds. NOR shall not modify, sell, or remove assets from the Rail Line that may be subject to restrictions designated by the Indiana State Historic Preservation office (DNR) under the terms of the INDOT Agreement. NOR shall request the Town's approval in writing not less than (30) days prior to NOR's proposed removal, sale, modification or improvement to Rail Line property other than for customary maintenance purposes. Modifications to the property to enhance rail freight efficiency and safety that are not in conflict

with State Historic Preservation goals are not to be unreasonably restricted by the Town or Museum.

7. Regulatory Compliance

NOR at its own expense shall comply with all applicable local, state and federal laws and regulations in its operation of the Rail Line; condition, inspection and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars and equipment are being operated over the Rail Line. Such compliance shall include, but not be limited to, the Federal Railroad Administration (FRA), Railroad Retirement Act, Federal Employers Liability Act, Surface Transportation Board and the provisions of the Federal Safety Appliance Act, as amended. Town shall comply with such local, state and federal laws and regulations as may be applicable to its ownership of the Rail Line. NOR shall indemnify, protect, defend, and save harmless Town and its officers, agents and employees from and against all fines, penalties and liabilities imposed upon Town or its officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable in any manner to the failure of NOR to comply with its obligations under this article.

8. Maintenance

NOR shall at its sole expense provide all Capital and Routine Maintenance of the Rail Line as defined herein. Routine Maintenance shall include those items

identified in Attachment A, which is made a part of this Agreement. All materials and labor expended by NOR in the performance of Routine Maintenance shall become a part of the Rail Line. At all times during which this Agreement is in effect, NOR shall perform maintenance so that the Rail Line shall comply with FRA Class I track safety standards between Milepost CI 230.92 (Malden) and Milepost CI 212.55 (N. Judson Museum Connection) and between LaCrosse wye trackage and Milepost 15.23 Wellsboro. Any trackage within those limits found not to be in compliance with FRA Class I track safety standards at the time of Initial Inspection shall be brought into compliance with that standard by NOR within 24 months of the execution date of this Agreement, except for trackage identified in Section 3(a) of this Agreement.

- A) In addition, between MP 212.55 North Judson and MP 223 LaCrosse, NOR shall maintain the main track to no less than FRA Class II track safety standards no later than 30-months from the effective date of this Agreement, and thenceforth maintain such track to that standard throughout the Term of this Agreement.
- B) In addition, between MP 223 LaCrosse and MP 230.92 Malden and between the LaCrosse wye trackage and MP 15.23 Wellsboro, NOR shall maintain the main track to no less than FRA Class II track safety standards no later than 6-years from the effective date of this Agreement and thenceforth maintain such track to that standard throughout the Term of this Agreement.

The Town reserves the right to have independent maintenance inspections (such as track and bridge) undertaken at its discretion and expense as performance checks against data provided by NOR. The Town and/or its designated agents will coordinate with NOR when an independent maintenance inspection is planned, and NOR shall reasonably accommodate such inspections.

The parties agree to mutually cooperate to seek rehabilitation funding from State, Federal, and Local sources to assist in the ongoing maintenance of the Rail Line. NOR shall supply the Town, within (30) days from the close of each calendar year, a detailed and itemized maintenance and rehabilitation plan for the following calendar year, outlining recommended capital and maintenance items to maintain safe and efficient services to customers and Museum, along with an estimate of the cost of such plan.

9. **Railroad Fund**

The parties agree to mutually cooperate to seek rehabilitation funding. Town shall establish and hold a Railroad Fund, for the sole purpose of providing property maintenance and improvements at the discretion of the Town, in addition to those provided by NOR. All revenues derived by Town as a direct result of the ownership of Rail Line by Town shall be deposited in this Fund and shall not be used for Town purposes beyond preservation, maintenance of the Rail Line including administrative, insurance and legal expense, and the benefit of the Museum. Revenues include, but are not limited to, proceeds from Revenue Sharing, Right-of-Way Occupations, Rentals of Rail Property, and any fees for

Museum-related activity. The Railroad Fund, may, at the discretion of the Town, be used for local-match purposes for any future State or Federal grant track-rehabilitation programs.

10. Capital Expenditures by NOR

NOR and Town agree that capital expenditures of a permanent and non-removable nature, may, at the option of NOR, be made to the Rail Line for the purposes of efficiency and safety in ongoing freight operations. Non-removable property improvements paid for wholly or in part by NOR shall become the property of the Town, subject to any claim by NOR as to remaining Book Value of such improvement, to be settled at the expiration or termination of this Agreement. Such remaining Book Value claim shall be calculated as follows:

- A) Cost of the Improvement shall be documented by receipt and/or other written evidence, including date of completion and/or service.
- B) Life of the Improvement shall be subject to IRS Definitions of Asset Life as outlined in IRS Publication 946 or its replacement, MACRS designation, specifically including rail assets.
- C) Book Value shall be the difference between Cost of the Improvement less Depreciation at straight-line, half-year convention, calculated to the end of the previous calendar prior to contract expiration or termination.

Remaining Book Value shall be paid to NOR only in the event of expiration or termination of this Agreement, regardless of cause.

11. Utilities

NOR, at its sole cost and expense, shall arrange for and obtain necessary water, electricity, and other utility services required for its use, including ongoing electrical supply to required crossing signal equipment. Town shall not be liable for any such services, or the suspension of such services.

12. Occupation of the Rail Line

Town shall have the exclusive right to all revenue generated from leases, licenses, easements and occupations located along the Rail Line. Such revenue is to be deposited in the Railroad Fund. In the event Town elects to grant new leases, licenses or easements for occupations of the Rail Line, such new occupations shall be subject to the reasonable review by NOR for impact on the safe operation of the Rail Line. NOR may elect to impose minimum engineering requirements consistent with standard railroad practices on such occupations.

13. Taxes

Each party shall be exclusively responsible for any taxes associated with the revenue it derives through this Agreement. Town shall be responsible for all property taxes, if any, attributable to the ownership of the Rail Line. NOR shall be responsible for any property taxes associated with the ownership of equipment used on the Rail Line. It is expressly understood that NOR shall not be responsible for property taxes based on the ownership of the Rail Line and Town agrees to reasonably support NOR in contesting any such assessment.

14. Insurance

NOR shall, at its own cost and expense, provide and procure Railroad Liability Insurance and, as applicable, Worker's Compensation or Federal Employer's Liability Act (FELA) insurance. This insurance shall be kept in force during the Term of the Agreement. All insurance required to be carried by NOR hereunder shall be issued by responsible insurance companies which are rated by Best Insurance Reports as A-:VII or better and licensed or authorized to do business in the State of Indiana. Each policy shall name Town and Museum, and any other party reasonably designated by Town as an additional insured, as their respective interests may appear. Each policy shall contain (i) a separation of insureds condition, and (ii) a provision that such policy and the coverage evidenced thereby shall be primary and noncontributing with respect to any policies carried by Town and that any coverage carried by Town shall be excess insurance for Town's interest only. A copy of each paid up policy (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Town within thirty (30) days after the signing of this Agreement, and thereafter, within thirty (30) days after any demand by Town therefor. Town may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by NOR hereunder. No such policy shall be cancelled, materially changed or reduced in coverage except with the prior approval of Town. NOR shall furnish

Town with a certificate of renewal of any such policy at least ten (10) days prior to the expiration thereof.

The Railroad Liability including FELA where applicable, insurance providing bodily injury, including death, personal injury and property damage coverage shall have a combined single limit of at least (\$10,000,000) each occurrence or claim and at all times an aggregate limit of at least (\$20,000,000). Such insurance shall contain broad form contractual liability coverage for construction or demolition work on or near railroad tracks, and any other coverage requested by Town which is customarily required in the railroad industry.

Workers' Compensation, where applicable, insurance shall cover the statutory liability as determined by the compensation laws of the State of Indiana or FELA, as applicable, with a limit of at least (\$5,000,000).

Town shall, at its own cost and expense, provide and procure General Public Liability insurance to be kept in force during the Term.

15. Indemnification by NOR

To the fullest extent permitted by law, NOR shall indemnify, defend, and hold harmless Town and the Museum, along with their respective consultants, sub-consultants, related companies or agencies, and the officers, directors, partners, insurers, attorneys, shareholders, board members, employees, and agents of each and any of them ("Town/Museum Indemnified Parties"), against and from any and all claims, liabilities and damages arising under, by reason of, related, or incidental to this Agreement or any negligent performance of the railroad

services, to the extent not caused by the negligence or willful misconduct of Town/Museum Indemnified Parties. Such indemnification by NOR shall include, but not be limited to, the following:

- a. Liability or claims of liability arising by reason of injury or damage to person (including death) and/or property (tangible or intangible) occurring as a result of railroad services performed pursuant to the terms of this Agreement;
- b. Liability or claims resulting directly or indirectly from the negligence or carelessness of NOR, its employees, or agents in the performance of the railroad services, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of NOR, its employees, or agents;
- c. Liability or claims arising directly or indirectly from bodily injury, occupational sickness or disease, or death of NOR's subcontractor's, or supplier's own employees or agents engaged in the railroad services resulting in actions brought by or on behalf of such employees against Town/Museum Indemnified Parties.
- d. Liability or claims arising directly or indirectly from or based on the violation of any law or regulation, whether by NOR, its employees, or agents;
- e. Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to Town/Museum Indemnified Parties or any other parties by NOR, its employees, or agents;
- f. Liability or claims arising directly or indirectly from the willful misconduct of NOR, its employees, or agents;

- g. Liability or claims arising directly or indirectly from any breach of the obligations assumed in this Agreement by NOR; and
- h. Liability or claims arising directly or indirectly from, relating to, or resulting from a hazardous condition created by NOR, subcontractor, suppliers, or any of their employees or agents.

15-A. Indemnification by Museum

To the fullest extent permitted by law, Museum shall indemnify, defend, and hold harmless Town and NOR, along with their respective consultants, sub-consultants, related companies or agencies, and the officers, directors, partners, insurers, attorneys, shareholders, board members, employees, and agents of each and any of them (“Town/NOR Indemnified Parties”), against and from any and all claims, liabilities and damages arising under, by reason of, related, or incidental to this Agreement or any negligent performance of the museum operations, to the extent not caused by the negligence or willful misconduct of Town/NOR Indemnified Parties. Such indemnification by Museum shall include, but not be limited to, the following:

- a. Liability or claims of liability arising by reason of injury or damage to person (including death) and/or property (tangible or intangible) occurring as a result of museum operations performed pursuant to the terms of this Agreement;
- b. Liability or claims resulting directly or indirectly from the negligence or carelessness of Museum, its employees, or agents in the performance of the museum operations, or in guarding or maintaining the same, or from any

improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of Museum, its employees, or agents;

- c. Liability or claims arising directly or indirectly from bodily injury, occupational sickness or disease, or death of Museum's subcontractor's, or supplier's own employees or agents engaged in the museum operations resulting in actions brought by or on behalf of such employees against Town/NOR Indemnified Parties.
- d. Liability or claims arising directly or indirectly from or based on the violation of any law or regulation, whether by Museum, its employees, or agents;
- e. Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to Town/NOR Indemnified Parties or any other parties by Museum, its employees, or agents;
- f. Liability or claims arising directly or indirectly from the willful misconduct of Museum, its employees, or agents;
- g. Liability or claims arising directly or indirectly from any breach of the obligations assumed in this Agreement by Museum; and
- h. Liability or claims arising directly or indirectly from, relating to, or resulting from a hazardous condition created by Museum, subcontractor, suppliers, or any of their employees or agents.

15-B. Insurance

Museum will procure a \$3,000,000 liability insurance policy and operate at a restricted speed which will permit stopping within one-half the range of vision but not exceeding 20 miles per hour. In the event Museum plans operations in excess

of the speed set forth above, it shall then procure \$5,000,000 of liability insurance. Town and NOR agree that the obligation of the Museum to indemnify hereunder shall be limited to the extent the underlying action which gives rise to the claim requiring indemnification is covered by the liability insurance policy and to the extent of the policy limits.

16. Revenue Sharing

NOR agrees to contribute a portion of the freight revenue it derives from operation of the Rail Line to the Town based upon the following schedule.

Term Years 1 thru 5, the Town shall be paid \$75,000.00 each January.

Term Years 6 thru 10, the Town shall be paid \$100,000.00 each January.

NOR shall provide Town a carload count monthly. NOR shall keep full and accurate books of account, records, cash receipts, and other pertinent data showing the loaded freight cars moved over the Rail Line. Such books of account, records, cash receipts, and other pertinent data shall be kept by NOR for a period of three (3) years after the end of the Term. It is the intentions of the parties that the Revenue Sharing paid by NOR to Town is to build funds to be deposited to the Railroad Fund. However, NOR shall have no claim as to the disposition of such Revenue Sharing funds held by the Town. In the event of a material change in freight traffic patterns on the Rail Line, the parties agree to negotiate in good faith to equitably revise the Revenue Sharing formula.

17. Financial Reporting

During the Term of this Agreement, the NOR shall, within sixty (60) days after the end of its fiscal year provide the Town with unaudited (preliminary) financial statement, and within one hundred five (105) days after the end of its fiscal year, provide the Town either with a audited financial report, or a Certified copy of the applicable final corporate tax report and supporting schedules as filed with the Internal Revenue Service, applicable only to NOR rail operations. In addition, NOR shall provide Town with monthly reports for (i) the number of carloads at the Rail Line, (ii) number of switch moves performed, (iii) number of stored cars on the Rail Line, (iv) the names of all users of the Rail Line, (v) new business prospects (vi) total revenue generated on the Rail Line segmented by customer and (vii) any other information reasonably requested by Town regarding the railroad services. Additionally, NOR shall provide Town with quarterly financial statements, including a balance sheet, cash flow, and profit and loss statements, reflecting the financial condition of NOR. Representative/s of NOR agree to meet not less than quarterly with Town or Town's agent/s and customers located along the rail line to review railroad operations.

18. Trackage Rights and Payments

Town reserves the right to allow the use of Rail Line for freight services by rail carriers other than NOR, if any such carrier:

- a) Does not either originate or terminate any freight activity on the Rail Line in competition with NOR;
- b) agrees in writing to indemnify NOR and hold it harmless against any and all liability arising in any way whatsoever from such carrier's use of the Rail Property, other than normal track wear and tear addressed below;
- c) is a bona-fide carrier legally and financially capable of providing such services;
- d) Agrees that at all times, the operations of such carrier shall be conducted in a manner which does not unduly interfere with NOR operations and shall be in compliance with all dispatching orders, operating rules, and schedules of NOR;
- e) Agrees to pay a users fee or trackage rights charge to the NOR of not less than sixty-six cents per car mile for any car or locomotive; loaded or empty, subject to annual escalation based on the change in the Rail Cost Recovery Index published by the Association of American Railroads.
- f) Does not conflict with provisions of this Agreement in relating to Historic Corridor Preservation, or conflict with approval of additional freight services.
- g) Does not require investment by NOR for improvement of designated track class, inspection standards, frequency, or additional insurance limitations to allow such service.

19. Hazardous Substances and Wastes.

For the purpose of this Section, “Hazardous Materials” shall mean any substance:

(a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contamination under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including for example only and without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including for example only and without limitation, gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation, and “Hazardous Materials Laws” shall mean all present and future government statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials.

NOR shall comply with Hazardous Material Laws in performing its railroad services. Without first obtaining Town’s written permission, NOR shall not treat or dispose of Hazardous Materials on the Rail Line, and shall not transport by railcar, or transload to or from railcars, or bring any Hazardous Materials onto the Rail Line, except such Hazardous Materials which have been approved by Town. NOR shall assume all responsibility for and shall indemnify, defend and hold harmless Town against all costs and claims associated with (i) a release or leak of any such Hazardous Materials caused by NOR unless such event was caused by

the negligence or willful misconduct of Town, or (ii) the violation of Hazardous Materials Law by NOR.

If NOR knows, or has reasonable cause to believe, that a Hazardous Material which has not been approved by Town has come to be located under or about the Rail Line, other than as specifically provided herein or as previously consented to by Town, NOR shall immediately give notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such hazardous substance.

20. Status Of NOR

It is understood and agreed that NOR (including NOR's employees) is an independent contractor and that no relationship of employer employee exists between the parties hereto. NOR's assigned personnel shall not be entitled to any benefits payable to employees of Town. Town is not required to make any deductions or withholdings from the compensation payable to NOR under the provisions of this Agreement; and as an independent contractor, NOR hereby indemnifies and holds Town harmless from any and all claims that may be made against Town based upon any contention by any third party that an employer employee relationship exists by reason of this Agreement.

It is further understood and agreed that as an independent operator and not an employee of Town, neither NOR nor NOR's assigned personnel shall have any entitlement as a Town employee, nor the right to act on behalf of Town in any

capacity whatsoever as agent, or to bind Town to any obligation whatsoever.

NOR, or its employees shall not be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by Town to employees of Town.

It is further understood and agreed that NOR must issue W2 and 941 Forms for income and employment tax purposes for all of NOR's assigned personnel under the terms and conditions of this Agreement.

21. Term, Default, and Termination

This Agreement shall be in full force for Ten (10) years from the Effective Date; provided, however, that this Agreement can be renewed for ten additional years from the date it otherwise would expire if, no later than (60) days before such expiration date, both Town and NOR provide written notice to each other of their intent to renew this Agreement for such additional ten-year period ("Term"); and provided further that Town shall have the right to terminate this Agreement immediately by written notice if NOR becomes bankrupt or unwilling or unable to operate this Rail Line at any time during the initial or renewed Term of this Agreement. If NOR defaults in the performance of any covenant or agreement required by this Agreement for a period of thirty (30) days, or fifteen (15) days for any monetary default, after written notice from Town to the NOR specifying such default, Town may, at its option, in addition to any other legal and/or equitable rights, terminate this Agreement by written notice; provided, however, that if such

default cannot reasonably be cured within thirty (30) days, Town shall not terminate this Agreement if NOR begins to cure the default within the thirty (30) day notice period and proceeds diligently to complete such cure; provided that in no event shall such cure period exceed one hundred and eighty (180) days unless approved by Town, in writing. In addition to the forgoing rights, and without limiting such right, upon any non-monetary default by NOR, upon not less than ten (10) days prior written notice (except in the case of an emergency) to NOR, Town may elect to cure such default and NOR shall reimburse Town for all expenses incurred to complete such cure, which reimbursement shall be due within ten (10) days following NOR's receipt of written demand from Town. The foregoing remedies are not exclusive; they are cumulative, in addition to any remedies now or later allowed by law, to any equitable remedies Town may have, and to any remedies Town may have under bankruptcy laws or laws affecting creditors' rights generally. The waiver by Town of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of the Revenue Share by Town subsequent to any breach hereof shall not be deemed a waiver of any proceeding breach other than a failure to pay the particular Revenue Share so accepted, regardless of Town's knowledge of any breach at the time of such acceptance of amount. Town shall not be deemed to have waived any term, covenant or condition unless Town gives NOR written notice of such waiver.

22. Removal of Operator Equipment, Personnel and Property Upon Termination

Upon the termination of this Agreement, NOR shall, at NOR's sole expense, remove its equipment, personnel, and other property from the Rail Line and shall restore, to the reasonable satisfaction of Town, such portions of that Line in good a condition, excepting normal wear and tear. NOR, at its sole expense, shall insure that any environmental remediation is completed to the reasonable satisfaction of Town.

23. Force Majeure

In the event of Acts of God, war, insurrection, civil disorder or labor actions, each party shall be reasonably relieved of its obligations herein, provided that the affected party exercises reasonable efforts to, within its ability, mitigate the scope and duration of such force majeure. A party claiming force majeure under this Agreement must expeditiously notify the other party of the force majeure situation and any actions being taken toward mitigation, and when force majeure ends.

24. Notices

Any notices, demands, requests or submissions which are required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by e-mail, or by such other means as the parties may agree, and shall be, except as otherwise noted herein, addressed as follows:

Name of New Operator Railroad

Address

City, State Zip Code

Phone:

Fax:

Email:

Incorporated Town of North Judson

204 Keller Ave

North Judson, IN 46366

Phone: (574) 896-3340

Fax: (574) 896-2153

Email: njclerk@embarqmail.com

Hoosier Valley Railroad Museum Inc.

PO Box 75

North Judson IN 46366-0075

Phone: (574) 896-3950

Email: hvrn@yahoo.com

25. Assignment

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. NOR may not assign this Agreement without the written consent of Town, which shall not be unreasonably withheld.

26. No Waiver

No delay or omission to exercise any right or option accruing to either party upon any breach by the other party shall impair any such right or option or shall be construed to be waiver thereof, but any such right or option may be exercised from time to time as often as may be deemed necessary by the non-breaching party.

27. Severability

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

28. No Abandonment

The NOR shall not apply for abandonment or discontinuance of service over any portion of the Rail Line without concurrence of the Town. Upon the termination of this Agreement, NOR shall file for necessary authorization from the STB or other regulatory authority, to discontinue rail service over the Rail Line or shall cooperate in a Notice of Exemption for change of operators.

29. Modification to Agreement

The provisions of this Agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this Agreement. Any agreement made after the Effective Date and

related to the subject matter contained herein shall be ineffective to modify this Agreement in any respect unless in writing and signed by NOR and Town and Museum.

30. General Provisions

- A. Authority. Each party represents and warrants to the other party that it is fully authorized to enter into and be bound by this Agreement.
- B. Time. Time is of the essence of this Agreement.
- C. Governing Law. This Agreement shall be construed and enforced under the law of the State of Indiana.

In witness whereof, the parties have below indicated their acceptance of this Agreement by their authorized signature:

For NOR:

For Town:

By: _____

By: _____

Title: _____

Title: _____

For Museum:

By: _____

Title: _____

ATTACHMENT A

Routine Maintenance

1. All Vegetation Control, spraying the Rail Line at least annually, including but not limited to clearing of vegetation obstructions at grade crossings and side ditches, removal of any trees encroaching on the track, bush-hogging of accessible areas in towns and along the Rail Line, debris removal dumped by third parties. NOR shall keep the Rail Line in a clean condition.
2. All Signal Maintenance, including but not limited to electrical power to existing signals, replacing batteries (including proper disposal), replacing light bulbs, lenses, gates, periodic testing, repair of damage caused by third parties, replacement of insulated joints, bond wires and above ground wiring, replacement of unusable heads, mast, cantilevers, electronic boards, bungalows, cabinets, gate mechanisms, underground wiring, or signal upgrades. Signalization maintained to FRA Class I or better.
3. All Grade Crossings, including but not limited to patching of surface with hot or cold mix, repair of broken rails, repair of crossing timbers, redriving lags, repair or replacement of cross-bucks sign posts and all signage, rebuilding of surface, replacement of track structure to the same designated track class, but no less than FRA Class I.

4. All FRA required Track and Bridge Inspections, copies available for Town upon request, to designated track class, but no less than FRA Class I.
5. All Switches, including but not limited to, inspection, lubrication and adjustment of all switches to designated track class, but no less than FRA Class I. Replacement of loose or missing bolts and cotter pins, replacement of banners as required, welding of points and frogs. Replacement of switch components, replacement of switch timbers. New switch timbers shall be used for any switch timber replacements.
6. Derailments, rerailing of all derailed cars and lading, repairs to track to return it to the same FRA class as prior to the derailment, spare material from the Rail Line may be used in the replacement if available, if not available NOR must purchase material at its expense.
7. All Joints and Broken Rails, including but not limited to, replacement of all missing or failed bolts (to no less than designated track class, but no less than FRA Class I), replace broken joint bars, repair/replace broken and/or worn rails and pull-aparts.
8. All Crossties: maintain tie conditions to designated FRA class in Section 8A or 8B of this Agreement, but no less than FRA Class I track safety standards. During the Term of the Agreement, there shall be not less than (15) non-defective crossties per each 39-foot rail and not more than one defective crosstie in lineage sequence. New crossties shall be used for any crosstie replacements.

9. All Plates, Spikes and Anchors, including but not limited to position loose plates and redrive loose anchors. Purchase of plates, anchors, spikes to maintain designated track class.
10. All Ballast Regulation, Surface, Spot Jacking and Tamping to meet designated track class, but no less than FRA Class I track. Additional ballast as needed to support designated track class, but no less than FRA Class I track safety standards.
11. All Interlocking Plants, including but not limited to inspection and repair as specified in agreements, including welding and bolts. Replacement of obsolete equipment, new crossing diamonds.
12. All Bridges-Trestles-Culverts, including but not limited to inspection, cleaning of drift, erosion control, installation, repair and replacement of walkways and walkway components, preventing ballast erosion. Replacement of piles, sills, caps, bents, stringers, deck boards, side boards, headwalls or other components associated with bridges, including replacement if necessary. Replacement of culverts.
13. Rehabilitation Program Preparation, preparing and submitting an annual track and bridge rehabilitation program, coordination of program administration including contractor monitoring. NOR shall develop a Bridge Management Program conforming to FRA rules and regulations.

EXHIBIT 8



KAPLAN KIRSCH ROCKWELL

June 1, 2016

L. Charles Lukmann, III
Harris, Welsh & Luckmann
107 Broadway
Chesterton, IN 46304

John K. Fiorilla, Esq.
Capehart & Scatchard
8000 Midlantic Drive
Suite 300S
P. O. Box 5016
Mount Laurel, NJ 08054-5016

Thomas McFarland, Esq.
208 South LaSalle Street
Suite 1890
Chicago, IL 60604-1112

Rachel Arndt, Esq.
Peterson Waggoner & Perkins, LLP
125 E. Tenth Street
Rochester, IN 46975

Thomas Wilcox
GKG Law, P.C.
1055 Thomas Jefferson Street NW
Suite 500
Washington, DC 20007

John D. Heffner, Esq.
Strasburger & Price, LLC
1025 Connecticut Avenue, NW
Suite 717
Washington, DC 20036

Re: Hoosier Valley Railroad Museum Excursion Service and the Line of Railroad
Serving the Town of Judson and LaPorte, Porter and Starke Counties, IN

Dear Ms. Arndt and Messrs. Lukmann, Fiorilla, McFarland, Wilcox and Heffner:

My firm has been engaged by the State of Indiana Department of Transportation ("INDOT") to assist and advise it with respect to issues raised in the matter concerning the continued operation of both freight and excursion service on the above-referenced line. As we understand the matter, the State of Indiana (the "State") provided funds for the acquisition of this line for the purpose of ensuring the continued operation of the excursion service operated by the Hoosier Valley Railroad Museum ("Museum"). As you know, the agreement providing federal aid funds for the purchase of the line also provided that freight service would be permitted on the corridor so long as such activity did not operate to the detriment of excursion services. INDOT believes that the excursion service can continue as the State and others envisioned when the line was purchased from CSX Transportation, Inc., without interfering with the ability of the Chesapeake & Indiana Railroad Company ("CKIN") (the authorized freight railroad operator) to provide service to the shipper on the line at the volumes and frequencies that the shipper currently requires. While excursion service is temporarily limited under an extension of the operating agreement that is effective through August 15, 2016, INDOT's understanding and expectation are that the excursion service will be able to return to normal operations upon completion of the Request for Proposal ("RFP") process which will authorize the Town to lease the rail line.

Ms. Arndt and Messrs. Lukmann, Fiorilla, McFarland, Wilcox and Heffner
June 1, 2016
Page 2

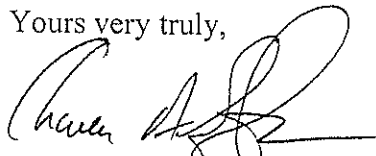
I understand that various parties with an interest in this line have asserted that federal law preempts the contractual rights granted the excursion service operated by the Museum along this line. While as a general matter this statement is true, it's also the case as I understand the applicable law, that those rights are preempted only to the extent that their exercise would prevent the freight railroad from fulfilling its common carrier obligations to the shipper(s) on the line. Absent such interference, attempts to permanently limit or discontinue the excursion service (which conflict with INDOT's purpose in providing funds for the purchase and restoration of the line) appear to have no basis in law.

INDOT's position on this matter remains unchanged since the 2004 agreement with the Town of North Judson became effective. The purpose of purchasing the line using federal-aid highway funds was to allow for the operation of the rail facility consistent with the (then) current usage (passenger excursions). There appears to be room on this line for additional freight activities without limiting the excursion service on the line, and given the importance to the State of preserving that operation across the entire line, the Parties will need to demonstrate in some detail why the two services cannot coexist fully on this line. To date, there has been no such showing. While INDOT is sensitive to the Town's efforts to complete the RFP process to allow for improved services for all interested parties, we are also concerned by recent communications on behalf of Co-Alliance which seem to suggest that freight operations would significantly and regularly disrupt passenger excursions. INDOT understands that the Town of North Judson intends to take steps to ensure that a new rail operator will accommodate the Museum's needs and its passenger excursions. INDOT will continue to monitor carefully the terms of the proposed agreement to ensure that the new agreement protects, to the fullest extent possible, the investment of federal-aid funds to avoid long-term disruption to the Museum's excursion service.

I would be happy, of course, to discuss this matter with you. At the same time, and at the direction of Katie England, Director of Multimodal Planning & Programs at INDOT, I am asking that you please direct any communications about proceedings at the Surface Transportation Board ("STB") or any other matters concerning the operation of freight and excursion service on this line to my attention.

Thank you for your attention to this matter.

Yours very truly,



Charles A. Spitulnik

cc: Ms. Katherine England
Lori Torres, Esq.
Allison I. Fultz, Esq.

EXHIBIT 9

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWN OF NORTH JUDSON, INDIANA)
-- ADVERSE DISCONTINUANCE OF) DOCKET NO.
SERVICE -- IN LAPORTE, PORTER,) AB-1232
AND STARKE COUNTIES, IN)

REPLY IN OPPOSITION TO MOTION TO COMPEL
RESPONSES TO REQUEST FOR ADMISSIONS

TOWN OF NORTH JUDSON, INDIANA
P.O. Box 56
North Judson, IN 46366

Respondent

RACHEL ARNDT
PETERSON WAGGONER & PERKINS, LLP
125 E. Tenth Street
Rochester, IN 46975
(574) 223-4292
rachel@peterson-waggoner.com

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorneys for Respondent

DATE FILED: May 20, 2015

would continue over the line regardless of whether that application were to be granted,^{1/} the factors bearing on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d) are circumscribed. Essentially, such an application is to be granted unless it is shown that shippers on the line are likely to be seriously harmed as a result of the rail service provided by the replacement rail operator. See, e.g., *Cheatham County Rail Auth. "Application and Petition" for Adverse Discontinuance*, 1992 ICC LEXIS 224 at *13-15 (FD No. 32049, renumbered AB-379X, decision served Nov. 4, 1992):

We have considered potential harm to shippers and the community. If we grant the adverse discontinuance, Centennrail's (the replacement operator) service will continue. In these circumstances, we focus on whether allowing MACO (the incumbent operator) to discontinue operating will result in a diminution of service having a serious adverse impact on shippers and the community." (at *13)

... Our task is to determine whether MACO's discontinuing operations would harm shippers and the community. We cannot find that it will. Participating shippers either support or are neutral about MACO's discontinuing service. All CCRA board members (owner) want MACO removed. The record does not show that allowing discontinuance of operations will result in significant diminution of service to shippers. . .Consequently, we find that there is no public interest in requiring that MACO continue to be permitted to operate the line." (at *14-15)

Correspondingly, matters that are relevant to an adverse discontinuance of that nature are also limited to whether a grant of the application would result in a diminution of service that would have a serious adverse impact on shippers and the community. CKIN's Motion is to be decided with those legal standards in mind.

^{1/} If the application were to be denied, the incumbent operator would continue to provide the service. If the application were to be granted, the replacement operator would provide the service.

VERIFIED STATEMENT
OF R. POWELL FELIX

R. Powell Felix, being duly sworn, deposes and states as follows:

My name is R. Powell Felix and I am President of the Chesapeake and Indiana Railroad Company, Inc. (CKIN), a Class III short line railroad. I have been involved with the railroad industry since 1978 and my career has covered all aspects of the railroad industry. CKIN is a wholly owned subsidiary of Indiana Boxcar Corporation (IBC), a short line railroad holding company that also owns three other non-contiguous short line railroads, and I am the President of IBC. I am submitting this verified statement to provide additional information in support of CKIN's petition.

1. The Rail Line presently operated by CKIN was subject to an abandonment proceeding by CSX in 2004. While the line had been a through route in various configurations for traffic to Chicago, by the 1980s it was severed and relegated to local traffic status. The traffic base was agricultural and traffic had declined to a few hundred carloads per year by the early 2000s. The remaining two shippers and local municipalities banded together to attempt to preserve the line and Stone Consulting was hired to assist in this matter.

Searching for prospective short line operators, IBC was contacted by Stone Consulting and asked to bid as the operator on the line. IBC responded to a Request for Proposal in May 2004 offered by the "Partnership" of Municipalities and Shippers. IBC's proposal was selected and CKIN was formed. However, funding for the proposed acquisition from CSX remained to be secured. I personally participated in the fund raising efforts including appearing before the Porter County Commissioners supporting solicitation of their financial contribution. While the bulk of the funding was anticipated to flow from Indiana Department of Transportation (INDOT), local matching funds were required to complete the funding package.

Although the path to preserving the Rail Line had wound along for many months, the acquisition from CSX happened quickly in August 2004. CKIN commenced operations under a Railroad Operating Agreement (ROA). The ROA was executed in the name of the Town of North Judson since the anticipated creation of a multi-governmental Port Authority had not been completed as originally contemplated in the RFP. As time passed, the Port Authority structure never progressed and the parties seemed comfortable with administration of the ROA remaining in the name of the Town with CKIN as its contract operator.

CKIN focused on rebuilding the traffic base and improving the physical plant. At the time of the acquisition, only the segment from LaCrosse to North Judson met Class I track standards. Shortly after the acquisition from CSX, Hoosier Valley Railroad Museum (HVRM) began conducting seasonal tourist operations on this segment that lacked any freight business. CKIN made increasing payments into the railroad maintenance fund under the ROA as matching funds for track and bridge improvements. CKIN secured various grants from INDOT, and coupled with its own funds and those from the shippers, the physical plant was improved. Approximately half of the track used for freight between Wellsboro and Malden now meets Class I standards and the bridges all capable of 286,000 pound loading critical to competitiveness in the agricultural business of the customers. CKIN constructed a new interchange with Norfolk Southern at Thomaston, providing competitive access to both CSX and NS markets. The primary customer

on the Rail Line, Co-Alliance, invested millions of dollars upgrading their facilities and traffic increased tenfold to over 4000 carloads per year.

2. The structure of the ROA is similar to other operating agreements that IBC has in place on two of its other present short line operations. In typical short line fashion, CKIN plowed any profits back into the physical plant to support the growing freight traffic base. Section 10 of the ROA provided the Town, as the administrator of the ROA, with an inducement to keep extending the term of the ROA in exchange for CKIN contributing the capital spending required for continued traffic growth. This was accomplished amicably as evidenced under Amendments One and Two to the ROA. That assurance continued to provide CKIN with the incentive and the security to continue making investments in the Rail Line.

As more of the Rail Line improved to meet Class I track status, HVRM was permitted to conduct occasional tourist operations to Thomaston (not crossing the NS) and a short distance west of LaCrosse to Wade Tower. Overtime, however, CKIN's relationship with HVRM and the Town began to deteriorate. CKIN increasingly feared that HVRM was not adequately addressing safety, including particular concern for some of the rolling stock it was using to haul passengers. A minor injury to an HVRM passenger in 2011 resulted in a personal injury lawsuit by that passenger against HVRM. Just before the statute of limitations expired in 2013, the injured passenger added CKIN as a defendant to the lawsuit. At this time CKIN discovered that HVRM's liability insurance carrier declined to extend coverage to CKIN on the grounds that HVRM had never executed any agreement with the Town or CKIN requiring such coverage. CKIN was compelled to provide its own defense in the lawsuit and mediated settlement.

3. The personal injury suit was settled in 2014, but CKIN continued to assert its concerns to the Town and HVRM that the lack of safety and liability coverage needed to be addressed. Not only did the Town ignore CKIN's concerns, but the Town began taking on a much more expanded role in directing funds from the ROA maintenance account maintained by the Town to activities beyond the narrow purposes envisioned by the ROA. CKIN, along with its major customer Co-Alliance, began sending public document requests to the Town for an accounting of the maintenance funds in light of the fact the Town's Clerk – Treasurer (to whom CKIN had been sending the quarterly revenue sharing checks meant for the maintenance fund) was convicted of embezzlement of Town funds.

HVRM's also took on an increased role in decision making, envisioning passenger trains operating with priority over all the trackage and at much higher (30 mph) speeds. The multimillion dollar tab for supporting such a vision would fall squarely on CKIN and Co-Alliance. By 2014, the Town had begun ceding control of Rail Line to HVRM, and with CKIN and Co-Alliance mutually stating the case that unfettered HVRM passenger operation would endanger the successful freight traffic and could not be financially supported, HVRM determined that CKIN must go.

4. In early 2015, I received a draft of a "new" Railroad Operating Agreement from HVRM. I was told by HVRM that if CKIN wanted to have any chance of remaining as the operator, CKIN must promptly submit a "bid" under the terms of the new ROA. I was also told that HVRM had lined up other operators that would be "bidding" under the new ROA against CKIN. It was explained to me that Mr. Mark Knebel of HVRM had worked with the Town to produce the new ROA. Thus, HVRM was intimately involved with the process of finding a replacement operator for the Rail Line, with the full knowledge of the Town, by mid-2015. When CKIN's council, Mr. Bruce Hugon,

sent a formal Public Records Request to the Town to discover information regarding this reported “bidding” involving other operators to replace CKIN, the Town responded that it had no documents of any kind (Ex. A). Subsequent discovery revealed e-mail correspondence with one of the prospective operators dating back to June 2015. I believe HVRM, on behalf of the Town, had similar undisclosed contacts with other prospective operators.

The Town had previously sent CKIN a default notice over false and exaggerated alleged violations of the original ROA and continued to have HVRM search for short line operators to replace CKIN. (Ex. B & C). The Town sent CKIN a notice terminating the ROA and initiated adverse discontinuance proceedings at the STB.

5. Under Section 10 of the original ROA that was in effect with the Town, CKIN was entitled to reimbursement for its non-removable capital expenditures that it had invested in the Rail Line. CKIN made the Town aware that there was a substantial sum owed to CKIN by the Town under Section 10. The Town, with input from HVRM, claimed that only a very minimal amount might be due to CKIN. After expenditure of considerable time and accounting cost, CKIN had Katz Sapper and Miler (KSM), its Indianapolis based, nationally recognized accounting firm, prepare a detailed estimate of the extent of the amount that would be due from the Town to CKIN upon termination of the ROA. Without citing any deficiencies, the Town indicated KSM’s calculation was not credible.

The Town then requested copies of CKIN’s tax returns. The Town is permitted to view CKIN’s tax returns under the terms of the ROA if the tax returns are kept confidential. In light of the fact that the Town had previously breached this confidentiality requirement regarding CKIN’s tax returns by sharing the confidential information with others, including HVRM, CKIN required Town council members to execute individual confidentiality agreements to prevent the disclosure of the confidential information contained in the tax returns and the supporting documents used by KSM to calculate amounts owed by the Town to CKIN. Given the significant amounts owed by the Town to CKIN and the positive support shown to CKIN by its customers, the Town agreed to mediate the dispute.

6. In December 2015 CKIN, the Town, and Co-Alliance, the largest shipper on the Rail Line, held a mediation session in Lafayette, IN. CKIN and Co-Alliance had held discussions during 2015 on ways to work cooperatively for a solution to stabilize the relationship between CKIN and the Town.

The parties developed a plan at the mediation to improve the relationship and operations on the Rail Line. That plan hinged on Co-Alliance becoming the lessee of the Rail Line from the Town, with CKIN remaining the operator under the Co-Alliance lease. This arrangement benefitted the Town because CKIN was willing to forgo its claims for payment due under Section 10 of the ROA in exchange for the ability to remain the freight operator under a Co-Alliance lease. It was also anticipated that the parties would later make arrangements to permit the continued tourist operation of HVRM in similar form, but with a written agreement to cover safety and liability concerns. The Mediation Agreement was drafted and shortly thereafter was approved by vote of the Town Council. It was anticipated by the parties that the change in the lessee might require the Town to go through the formality of a Request For Proposal (RFP), but the RFP would be written in a manner to favor the outcome of Co-Alliance becoming the lessee

and the Town achieving the favorable outcome derived from elimination of its obligations to pay CKIN under Section 10. The parties agreed to work in Good Faith to secure this “grand bargain”.

7. While the Mediation Agreement executed by the Town, Co-Alliance and CKIN did not include any direct involvement of HVRM, HVRM’s hand was soon to be seen again in steering the RFP process. As previously noted, during 2015, HVRM worked to find alternative operators to replace CKIN with the clearly stated goal of “anybody except CKIN”. Despite the satisfaction of CKIN’s customers, HVRM specifically solicited operators willing to accept HVRM’s desire to control operations of the Rail Line with a passenger first mentality. The Town was aware that HVRM was doing this bidding on behalf of the Town. This is evidenced by that Town stating on page 6 of their its STB Reply in Opposition to Motion to Compel Responses to Interrogatories and Requests for Production, Docket No. AB-1232, that the Town “has chosen” an operator and would soon make the identity known to the STB (Ex D).

The RFP process was faulty in that the selected carrier did not meet two or more of the RFP’s selection criteria. CKIN also believes that the RFP process was procedurally defective with the Town giving HVRM’s Mr. Knebel a role in the selection of the new carrier while HVRM also had a stake in the outcome as an interested party. (Ex. C). Thus the 2016 RFP process, allegedly solicited by the Town, was indelibly tainted not only by the release of CKIN’s confidential traffic information, but by the overbearing hand of HVRM. The Town has even publically acknowledged in the RFP that HVRM was afforded direct participation in the selection process for a new operator (Ex. E).

Not satisfied with its role of self-appointed manager for the future of the Rail Line, HVRM sees fit to use its newsletter to communicate with its “members” about CKIN. Excerpts from HVRM’s recent newsletters are attached to provide the Board with a flavor of the HVRM’s views (Ex. F).

8. Despite the prohibition in Item 4 of the Mediation Agreement, and contrary to HVRM’s false accusations, there were to be no passenger trains prior to the May 15, 2016 extension of the Mediation Agreement, in order to permit the parties to determine how to accommodate both freight and passenger on the Rail Line. Despite that prohibition, HVRM soon contacted CKIN about operating the Easter Train on March 26th of this year. The Town supported HVRM’s request and very reluctantly, CKIN, in the spirit of the Good Faith provision in the Mediation Agreement, acquiesced and permitted this one-time passenger train. Unfortunately, the Good Faith requirement was never reciprocated by the Town.

Due to continuing pressure from the Town, and even INDOT, CKIN relinquished CKIN’s FRA authority and obligation for the portion of the line from North Judson to MP 218.0 near English Lake on May 3, 2016. CKIN’s action permitted HVRM to have free reign to operate on this segment because it has never had any freight business and unlikely to ever have future freight business. Thus the Town became the responsible party for this North Judson to English Lake segment and the Town has permitted HVRM to continue operations on this segment. This directly contradicts HVRM’s false, public accusations against CKIN (Ex. G) that CKIN prevented HVRM from operating its passenger operations.

9. The Town’s RFP favored the desires of HVRM for unfettered passenger operations over the entire Rail Line with minimal regard for the detrimental effect such operations would have on freight operations. CKIN frequently conducts freight operations seven days per week to meet the

demands of promptly turning unit trains to meet customer needs. This level of service has permitted the dramatic growth in freight car count under CKIN's watch. With limited siding capacity, unit trains, or blocks of cars, are frequently held on the main track between Wellsboro and Malden (via LaCrosse).

HVRM has accused CKIN of deliberately "storing" freight cars on this portion of the Rail Line in order to prevent further operation of passenger trains by HVRM. In an effort to resolve this issue, CKIN has spent over \$1,000,000 adding approximately one additional mile of siding capacity. Even still, multiple unit trains are simultaneously on line and CKIN will use a portion of the LaCrosse to English Lake segment to hold extra cars. For the record, all of the freight cars that HVRM alleges were "stored" on the Rail Line were simply being held for CKIN's customers to load or unload. This is usual and customary in the short line industry and the means by which CKIN and its customers have been able to successfully grow the freight business to over 4000 carloads per year. This practice benefits both HVRM and the Town as those freight cars generate the funds needed to maintain and improve the Rail Line.

The 2004 OFA process used to acquire the Rail Line mandates continued freight service as the primary purpose of that process. CKIN was aware that the OFA submission by the Town, as representative of the partnership referenced in the original 2004 RFP, stated the purpose as freight service preservation. While CKIN was also aware of the wishes of HVRM from the beginning, it believed that the initial limited passenger operations between North Judson and Lacrosse could be accommodated without major disruption to freight service. However, any passenger service must be conducted with an unwavering commitment to safety coupled with an acknowledgement that the inherent dangers of hauling passengers requires both proper liability coverage and risk allocation.

10. CKIN is passionate about safety and it shows. During CKIN's twelve years of operations there has never been an FRA reportable derailment by a CKIN train, there has never been a grade crossing collision, and there has been only one minor FRA reportable employee injury. CKIN maintains a well-trained, professional workforce and is regularly inspected by various FRA disciplines. CKIN hauls grain and fertilizer yet focuses on safety. HVRM hauls passengers and lacks the necessary safety focus.

Over the past several years, there have been multiple incidents involving HVRM where passenger safety was compromised. A prime example would be the most recent incident that occurred on September 24, 2016. While CKIN has been unable to find any official reports on this incident, a first-hand account of the incident from a HVRM member is attached (Ex. H). The incident involves a fire and subsequent evacuation of the HVRM passenger train. Although there does not appear to have been any injuries to passengers, the incident clearly put passengers in danger.

The location where the fire and evacuation occurred happened to be adjacent to a paved county road that facilitated the evacuation and fire department response. Had the same incident occurred between English Lake and LaCrosse, where HVRM continues to make demands on CKIN that HVRM should be permitted to operate its passenger trains, there are stretches of the line over a mile long without road access. Indeed, HVRM wanted CKIN to permit the very train that was involved in this incident to operate to LaCrosse on September 24, 2016 (Ex. I). Fortunately, CKIN properly refused to permit this extended passenger operation.

11. On October 4, 2016, the FRA granted HVRM a waiver for Part 219 of 49 CFR (Ex. J). While CKIN employees are required to comply with the random drug and alcohol testing regulation of Part 219, HVRM's volunteers are not held to that same standard. HVRM obtained this waiver by misrepresenting numerous facts in HVRM's request for waiver to the FRA. Despite HVRM operating a passenger service, the October 4th letter provides the following condition: "Note: passenger trains will not operate on any excepted track".

Passenger operations are only permitted on track that meets FRA Class 1 standards or higher, and Excepted track does not meet those standards. Only the trackage from LaCrosse to North Judson met the Class 1 standards when the Rail Line was acquired from CSX. Since then, CKIN has invested substantial sums upgrading the track conditions to meet Class 1 Standards. However, there remain two segments (from LaCrosse to Malden, and from Thomaston to Hanna) that do not presently meet Class 1 standards and remain as Excepted track. Even though passenger trains are not permitted to operate on Excepted track, HVRM has continually sent notices to CKIN of HVRM's intent to operate to both Malden and Hanna (Ex. K), neither of which can be reached by HVRM without traversing Excepted track.

12. Given HVRM's questionable safety record and disregard for regulatory compliance, CKIN is not adequately protected by HVRM against any possible liability arising from HVRM accidents. One common way for two rail operators to cover potential liabilities arising from shared operations is to enter into a written agreement that spells out the duties and obligations regarding General Liability Insurance (GLA). HVRM has steadfastly refused to enter into such an agreement with CKIN. To the best of my knowledge, this lack of any written agreement extends to the HVRM – Town relationship. While HVRM does have GLA, the amount of that insurance, and the coverage afforded CKIN under the policy remains in question as evidenced by the lack of coverage provided to CKIN in the 2013 lawsuit described in Section 2 of this statement.

HVRM has provided CKIN with two Certificates of Insurance naming CKIN as an additional insured, one indicating a \$2 million level and the other indicating a \$10 million dollar level. Only a single copy of the actual HVRM GLA policy has been provided CKIN and it indicates a \$2 million dollar amount. CKIN's insurance broker has submitted a letter confirming CKIN's concerns about coverage (Ex. L).

It is my understanding that CKIN's STB counsel raised the issue of liability allocation as well as the issues of insurance coverage and freight versus passenger priority and conflicts with HVRM's counsel during a conference call in June 2016. HVRM's counsel's response was to the effect that by signing the 2004 Operating Agreement, CKIN had acquiesced in an arrangement more favorable to HVRM than might normally be the case.

13. Finally, I wish to reiterate that CKIN is not irrationally opposed to passenger operations. Tired of being painted as the villain, as previously stated, in May 2016 CKIN elected to make the portion of the Rail Line between North Judson and English Lake available to HVRM, without any restrictions. The opportunity for HVRM to display their operating ability and concern for safety was thus provided to HVRM, with the anticipation that improved performance in these areas would be demonstrated. Thus far, HVRM appears content to squander this opportunity, as

demonstrated not only by the September incident itself, but HVRM's response (or lack thereof) to the incident as a wake-up call to the importance of safety.

VERIFICATION

STATE OF)

)

CITY OF)

R. Powell Felix

_____, being duly sworn according to law, hereby deposes and states that (s)he holds the position of President with applicant/petitioner, is authorized to make this Verification, had read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of (her)his knowledge, information, and belief.

R. Powell Felix

Subscribed to and sworn to before me, a Notary Public, in and for the County of Fayette in the State of IN, this 10th day of November.

Monica L. Struewing
Notary Public

My Commission expires:



Ex. A

Powell Felix

From: "Hugon, Bruce A." <BAH@stuartlaw.com>
Date: Wednesday, July 1, 2015 12:01 PM
To: <ibcx@frontier.com>; <John.Heffner@strasburger.com>
Cc: "Hugon, Bruce A." <BAH@stuartlaw.com>
Subject: FW: Public Records Request

fyi

From: Rachel Arndt [mailto:rachel@peterson-waggoner.com]
Sent: Wednesday, July 01, 2015 11:59 AM
To: Hugon, Bruce A.
Subject: Re: Public Records Request

Bruce:

I got your email. I am going to be out of the office most of this week and will be meeting with the Town Council on Monday night, July 6th. I am going to share your email with the Council and work through it. I will follow up with you as soon as I have an opportunity to speak with Donna and the Town.

On Wed, Jul 1, 2015 at 11:31 AM, Hugon, Bruce A. <BAH@stuartlaw.com> wrote:
 Rachel: I have a couple of concerns about the Town's response to our recent public records request (attached):

1. The response to our request directed to selection of a replacement operator is that there are "[n]o documents to provide as no official vote has been taken."

a. In recent filings with the STB, your counsel has represented that a replacement carrier has been selected and would soon be announced. How do you square that with the response to our request?

b. The request asks about information supplied from and to "prospective" replacement operators, not just those as to which an official vote has been taken. Please direct the Clerk to provide the requested information.

2. We requested a balance sheet listing assets and liabilities of the Town – what we received is just a Fund Report and contains no listing of assets. Please direct the Clerk to provide the requested information.

Bruce

Bruce A. Hugon
 STUART & BRANIGIN LLP
 8888 Keystone Crossing, Suite 1300
 Indianapolis, IN 46240
 Phone: (317) 575-2551
 Fax: (317) 574-7050
 e-mail: bah@stuartlaw.com

This message is confidential, intended only for the named recipient(s) and may contain information that is privileged, attorney work product or otherwise exempt from disclosure under applicable law. If you receive this message in error or are not the named recipient(s), please notify the sender at either the e-mail address or telephone number above, and delete this e-mail from your computer. Thank you.

3/25/2016

Re: TNJ Legal Contacts

Town of North Judson-Railroad Issues

Email

10/29/2015 10:59 AM

From

Paul Didelius <pd@frontierrail.com>

To

Rachel Arndt <rachel@peterson-waggoner.com>

Rachel:

Hello, I thought I would offer this note to check in, and advise I remain interested in obtaining the operating contract for the Town of North Judson rail line. It would be very helpful to hear, nominally at least, from the Town in some way on this - if nothing else to be told the matter is moving forward at some level of consideration and that we will be contacted for next steps when it is appropriate that we be contacted.

I think you know we have already put considerable expense into several trips to the area, staff time, working on the transition as represented to us by Town representatives, and through the agreement format which we agreed to generally as a requirement of being considered. We were ultimately selected through the Towns process over G&W. I understand the incumbent operator was non-responsive. However, I believe due to maneuverings of the incumbent that process has been stalled - and I hope you can appreciate my concern as the selected operator, the line of communication having gone cold.

It would be very helpful to me to see some feedback / guidance on the next steps I should anticipate, so that I can economically prepare - and protect my existing investment into the project as well.

Thanks much -

Paul Didelius
(509) 540-9499

On Wed, Jul 15, 2015 at 8:22 AM, Rachel Arndt wrote:

Paul:

My office is actually 45 minutes away from North Judson. In any event, I am scheduled to be in Court in the morning and then I have client conferences in the afternoon, so I am packed full tomorrow. Thank you for reaching out to me though, hopefully we will have the opportunity to meet each other another time!

On Wed, Jul 15, 2015 at 8:02 AM, Paul Didelius wrote:

Rachel, good morning.

I will be meeting Indiana DOT tomorrow at 10. Would your tomorrow afternoon have any opportunity for me to stop in and introduce myself?

Thank you -
Paul Didelius

On Jul 1, 2015 10:50 AM, "Rachel Arndt" wrote:

No problem. I will call in at 10:15 a.m. Thanks for letting us know.

On Wed, Jul 1, 2015 at 10:47 AM, Paul Didelius wrote:

I will not be in position by 10, and will need to set back to 1015 Central.

Thank you for your patience.

On Jul 1, 2015 8:09 AM, "David Anzur" wrote:

1 (800) 356-8278

758615 pass code

8850 host pass code in case I'm out.

I should be able to make it.

David Anzur
Frontier Rail
(503) 585-4264

On Jul 1, 2015, at 5:41 AM, Paul Didelius wrote:

David, is there a conference line we can supply?

Thanks

On Jun 30, 2015 6:34 AM, "Rachel Arndt" wrote:

Paul, that works for me. I will mark you down. I will put you down for an hour. If we need the time, we have it. If not, then that is ok too. I can call you, can you send me your phone number again? Thanks!

On Fri, Jun 26, 2015 at 4:29 PM, Paul Didelius wrote:

Rachel, wonderful.. and I appreciate the swamped that I have that here too.

What about 10 Central / 11 Eastern on Wednesday? I would think a nominal 10 minutes would suffice to start - Let me know if you would like me to budget some more time for the initial conversation?

Thanks for the response, have a great weekend.
Paul Didelius

On Jun 26, 2015 1:09 PM, "Rachel Arndt" wrote:

Hi Paul:

I got your messages, but have been swamped here. My schedule opens up on Wednesday of this coming week. Would you be available sometime on Wednesday to chat? What times work for you?

On Fri, Jun 26, 2015 at 3:49 PM, Paul Didelius wrote:

With the Town I am interested to advance our completion of the lease and operating agreement.

Rachel, if you can respond to this email with a good time that we can talk next week, I would appreciate that.

I hope everyone has a great weekend and look forward to talking soon.
Paul Didelius

On Jun 15, 2015 7:38 PM, "Hoosier Valley RR Museum" wrote:

Paul, below are the legal contacts for the Town of North Judson. Rich and I informed the council and Rachel of the latest information tonight. Rachel is open to discussion at your convenience.

I have provided your contact information at the bottom as reference to the others.

Mark Knebel
574-225-0255 c

Rachel A. Arndt
Peterson Waggoner & Perkins, LLP
125 E. Tenth Street
Rochester, IN 46975
(574) 223-4292
FAX (574) 223-470
www.peterson-waggoner.com
<http://www.facebook.com/PetersonWaggonerPerkinsLLP>

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 S. LaSalle St., #1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)

Paul Didelius
frontierrail.com
(509) 540-9499

Ex. B

**STUART &
BRANIGIN^{LLP}**
L A W Y E R S

Bruce A. Hugon
Direct: (317) 575-2551
E-mail: bah@stuartlaw.com

www.stuartlaw.com

May 13, 2014

Via E-mail Only

Rachel A. Arndt
Peterson Waggoner & Perkins, LLP
125 East Tenth Street
Rochester, IN 46975-1736

Re: Notice of Agreement Violations

Dear Ms. Arndt:

This letter is in reply to your letter of May 6, 2014 regarding alleged violations of the Operating Agreement dated August 31, 2006, as amended, by my client, Chesapeake and Indiana Railroad (CKIN):

1. Since the commencement of the Agreement, the Town has received monthly reports outlining the traffic growth on the Rail Line. Your letter states: "For example, last summer a number of cars were stored in North Judson without the prior notice or permission given." The referenced Paragraph 4 a) has three subparts, all pertaining to potential adverse impact on the operations of the Museum. Certainly the Museum had full advance knowledge of the cars being stored in North Judson. Indeed, the Museum solicited the car storage, as it has done several times in previous years, and the Museum collected revenue on cars that were stored in North Judson. The revenue collected by the Museum involved cars stored both on tracks owned by the Town and those owned by the Museum. In order to remove any future possibility of misinterpretation of this item by the Town, CKIN will no longer bring any storage cars to North Judson for either CKIN's own account or the account of the Museum.
2. As outlined above, last year the Museum was collecting storage on cars stored on the line owned by the Town. This raises the question: Does the Town expect CKIN to pay revenue sharing on cars that the Museum collects the revenue on? For the record, every car that CKIN held on the Town's tracks in North Judson last year came in empty, was loaded on line, and generated revenue sharing

Reply to Indianapolis Office

8888 Keystone Crossing • Suite 1401 • Indianapolis, Indiana 46240 • (317) 574-7245 • Fax (317) 574-7050
300 Main Street • Suite 800 • P.O. Box 1010 • Lafayette, Indiana 47902 • (765) 423-1561 • Fax (765) 742-8175

payments for the Town. The same cannot be said for the tank cars that were stored by the Museum and generated revenue for the Museum's account. Those cars came in empty and left empty, generating no revenue for the Town. CKIN is completely current in its revenue sharing payments to the Town.

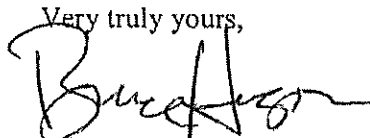
3. CKIN is in full compliance with all federal and state environmental laws and regulations. Indeed the EPA has visited CKIN and no violations were noted. The "... locomotive oil soaked pads..." are just that, being designed to capture any fugitive oil and prevent contamination. The pads are periodically changed out and the severe winter weather and snow cover unfortunately delayed the regular change out this year. CKIN makes every effort and expends considerable sums to be environmentally compliant, with the new oil pads being installed last month once the weather permitted.
4. The practice relating to Paragraph 8 has been for the maintenance and rehabilitation needs of the rail line to be periodically discussed at the "Railroad Committee" regular meetings where the Town is represented. Every year since 2007, CKIN has consistently worked closely with the Town and developed project plans that have greatly improved the rail line. Generally these plans focus on securing grant funds from the Industrial Rail Service Fund, and CKIN has been remarkably successful in securing over a million dollars of these grant funds. The 2014 plan focuses on bridge repair and replacement. The Town is fully aware of the details of the 2014 IRSF application and, as per accepted past practice, the detailed IRSF application satisfies the planning requirements of Paragraph 8.
5. Paragraph 17 specifies CKIN provide the Town "... with a confidential, audited financial statement, or a Certified copy of the applicable final corporate tax reports and supporting schedules as filed with the Internal Revenue Service ...". CKIN does not prepare audited financial statements and has regularly provided the Town with a copy of CKIN's corporate tax return as filed with the IRS. The confidentiality requirement for this document is plainly identified in Paragraph 17. It has come to CKIN's attention that the confidentiality requirements pertaining to CKIN's corporate tax returns previously provided to the Town may not have been observed by the Town. CKIN stands ready to provide the required tax returns once their confidentiality can be assured by the Town.
6. The determination of Class I track is made by the Federal Railroad Administration pursuant to the Track Safety Standards (49 CFR Part 213). The FRA has consistently inspected the track between LaCrosse and North Judson used by the Museum and found it to be in compliance with Class I standards. The ties that were installed east of SR 8 in LaCrosse were the direct result of track wear and damage resulting from operation of steam locomotive 765. The Museum and the Fort Wayne Railroad Historical Society were expressly bound by contract to

Rachel A. Arndt
May 13, 2014
Page 3

cover the cost of such items. Any funds supplied by the Town in this effort come from the Capital Improvement Fund as specified in Paragraph 15.

If, after you have reviewed this letter and investigated further, the Town nevertheless feels that the Operating Agreement has been materially breached by CKIN, perhaps the Town should invoke the arbitration provision of Paragraph 29. And, of course, depending on the Town's responses to CKIN's forthcoming list of the Town's breaches, CKIN may determine that it must invoke the arbitration provision.

Very truly yours,



Bruce A. Hugon

BAH/mbk
Doc#708087

PETERSON WAGGONER & PERKINS, LLP

Partners

TED A. WAGGONER

T. ANDREW PERKINS

ATTORNEYS AT LAW

125 East Tenth Street

Rochester, Indiana 46975-1736

(574) 223-4292 ~ FAX. (574) 223-4701

www.peterson-waggoner.com

Associate

RACHEL A. ARNDT

Retired

ROBERT E. PETERSON

April 7, 2014

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Chesapeake and Indiana Railroad, Inc. *Re: Notice of Agreement Violations*
C/O Powell Felix
916 Vine Street
Connersville, IN 47331

Dear Mr. Felix:

As you know, I represent the Town of North Judson ("The Town"). I have had an opportunity to review the Railroad Operating Agreement ("Agreement") between you, the Town, and the Hoosier Valley Railroad Museum ("The Museum"). I have found several areas of concern and on behalf of the Town of North Judson, I am writing to notify you of the defaults, pursuant to Paragraph 26 of the Railroad Operating Agreement. The defaults are as follows:

1. Neither the Town, nor the Museum, has received notice, in writing, of any pending operational change/increase of freight activity on the line, as required under Paragraph 4(a) of the Agreement. For example, last summer a number of cars were stored in North Judson without the prior notice or permission given.
2. The Town expects full disclosure of all cars stored on any line owned by the Town. Pursuant to the Agreement, the Town also expects payment for all revenue shares pursuant to the Agreement. The Town indicates that you have refused to make payment for your Quarter 1 revenue shares due and as of March 1, 2014, you have failed to pay Quarter 2 revenue shares as well.

3. Paragraph 7 requires CKIN to comply with all federal and EPA laws regarding contamination and pollution. It is the position of the Town that locomotive oil soaked pads and oil contamination has been observed in several locations along the Rail Line, specifically on the track by Lacrosse and Union Mills by 900S, and constitutes a violation of federal EPA laws as well as Indiana's environmental laws;

4. Paragraph 8 of the Railroad Operating Agreement requires a detailed and itemized maintenance and rehabilitation plan to be submitted within 30 days from the close of the calendar year. To date, no such plan has been submitted to the Town for 2014.

5. Paragraph 17 requires CKIN to submit to the Town an unaudited financial statement within 60 days after the end of the fiscal year. Paragraph 17 also requires an audited financial report to be submitted within 105 calendar days from the end of the fiscal year. The Town indicates that it did not receive any such financial statement for 2012 and has yet to receive one for 2013.

6. Paragraph 8 of Attachment A of the Agreement requires you to maintain the rail between Lacrosse and the North Judson Museum Connection MP 212.55 in such a way as to maintain FRA Class 1 or better. This is to be done at your sole expense pursuant to the Agreement. The Town is aware that CKIN has not done so and in fact, the Town and HVRM funded the purchase and installation of 369 new railroad ties at Lacrosse, east of SR 8.

April 7, 2014

Page 3

The Town hereby notifies you of these defaults and demands that you remedy or correct the defaults within 10 days from the date of this notice. Failure to do so may result in termination of the Agreement. The Town also notifies you that it requires the payment of all revenue shares owed to the Town to be paid quarterly from now on, and that reimbursement for all past due Quarters will be paid by the end of the current fiscal Quarter.

Respectfully,

PETERSON WAGGONER & PERKINS, LLP

A handwritten signature in cursive script, appearing to read "Rachel A. Arndt", written over a horizontal line.

Rachel A. Arndt

RAA

cc: client

Ex. C

PETERSON WAGGONER & PERKINS, LLP

Partners
TED A. WAGGONER
T. ANDREW PERKINS

ATTORNEYS AT LAW
125 East Tenth Street
Rochester, Indiana 46975-1736
(574) 223-4292 ~ FAX: (574) 223-4701
www.peterson-waggoner.com

Associate
RACHEL A. ARNDT
Retired
ROBERT E. PETERSON

November 20, 2015

VIA Email: pd@frontierrail.com

Dear Paul:

I am writing in response to your November 18, 2015 email requesting information regarding the status of operations on the rail line owned by the Town. I have forwarded your email thread along to all member of the Board. I did forward your October 14, 2015 email to the Town Council Members when I received it last month.

The Town remains interested in Frontier as a replacement operator for the rail line. The Town remains impressed with your operation and hopes that Frontier will remain interested in the prospect of operating the rail line once the STB litigation draws to a conclusion. You are correct that the Town showed enthusiasm for your company and what Frontier has to offer. The Council authorized the Town Representative, Mark Knebel, to share the proposed operating agreement with you so that you can review it. That was felt to be an appropriate move considering both your interest and the fact that the operating agreement is a document accessible to any interested operator.

The Council is currently involved in complex federal litigation, as I know that you know, and am sure you can appreciate. It is true that the Council felt ready to make a selection for a replacement operator and that it represented as much in an early STB filing. However, it is important that you know that at no time did the Town make a final vote selecting an operator. Any representation that a final vote had occurred and that Frontier had been selected was made without the knowledge or authorization of the Town Council. In addition, the Council has been encouraged by its legal counsel not to make a selection until farther along in the STB process.

There are several reasons for not making a final selection. The first is that the Council does not want to move forward in selecting a replacement operator only to find that it is unable to honor a service agreement should the STB litigation result in an unfavorable ruling for the Town. Second, the Council prefers to not make a complicated matter more complicated by involving another operator until it is advised to do so by legal counsel. Third, the Town will be submitting to Mediation in this matter, and has agreed not to select a replacement operator until Mediation is complete.

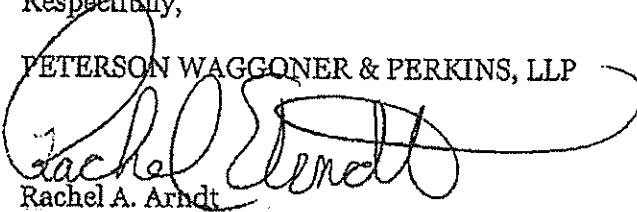
It is true that it is likely that Frontier may be asked to submit additional documentation prior to the Town making a final selection. That is not meant to be interpreted as a lack of interest by the Town, or as anything other than the Town following proper procedure. As I explained some time ago, in doing additional research regarding the procedure for selecting an operator, I located a statutory requirement whereby a municipal corporation like the Town must first publish requests for proposals prior to selecting and finalizing an operating agreement. I am exceedingly glad that the Town did not make a final vote on selecting Frontier when it did because it is my opinion that not having first published requests for proposals would have made any finalized operating agreement between Frontier and the Town voidable at best and void at worst. It is my understanding that either you or another representative from Frontier confirmed this requirement with Tom McFarland.

I want to take a moment to discuss your invitation to meet at my office. My hesitancy in doing so should not be taken personally. My opinion is that since I am only legal counsel for the Town, it is inappropriate for me to meet with anyone interested in being a service provider for the Town. The reason is that first, I am not a decision maker. I do not vote. Second, I want to avoid the appearance of impropriety by creating in the mind of either the Council Members or the Public that I am advising the Town to either accept or reject a proposed contract or operating agreement because I have had meetings outside of the presence of the Council with anyone.

I hope this helps to offer clarity and an appropriate update. To avoid any future misrepresentations regarding the status of litigation, I ask that you contact either me or Wendy Hoppe, our Council President.

Respectfully,

PETERSON WAGGONER & PERKINS, LLP



Rachel A. Arndt

cc: Council Members

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWN OF NORTH JUDSON, INDIANA)
-- ADVERSE DISCONTINUANCE OF) DOCKET NO.
SERVICE -- IN LAPORTE, PORTER,) AB-1232
AND STARKE COUNTIES, IN)

REPLY IN OPPOSITION TO MOTION TO COMPEL
RESPONSES TO INTERROGATORIES
AND REQUESTS FOR PRODUCTION

TOWN OF NORTH JUDSON, INDIANA
P.O. Box 56
North Judson, IN 46366

Respondent

RACHEL ARNDT
PETERSON WAGGONER & PERKINS, LLP
125 E. Tenth Street
Rochester, IN 46975
(574) 223-4292
rachel@peterson-waggoner.com

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorneys for Respondent

DUE DATE: June 8, 2015

4. **Discovery Related To Interests That Will Be Burdened By The Discontinuance (Motion at 6-7, Request for Production, Nos. 20-22)**

This discovery is based on the assumption that the Town or the Museum, or both, will succeed CKIN as operator(s) of the rail line, and argues that neither has the ability or experience to operate a rail line (Motion at 7).

The Town hereby states unequivocally that rail service will continue over the line, but that neither the Town nor the Museum will be the replacement operator of the rail line. Consequently, discovery designed to denigrate the Town and Museum is not relevant.

The Town is very close to disclosing the identity of the rail carrier that it has chosen to be the replacement operator of the rail line. CKIN and the Board will be notified of that replacement operator. CKIN will have ample opportunity in its Protest to provide any evidence or argument regarding that proposed replacement operator.

5. **Discovery Related To The Town's Satisfaction With CKIN's Operations Prior To 2014 (Motion at 7, Request for Production Nos. 23-24 and Interrogatory Nos. 4-9, 19-20)**

This discovery is designed to establish that prior to 2014, the Town did not express dissatisfaction with CKIN's operation of the rail line (Motion at 7).

That matter is wholly irrelevant to the adverse discontinuance proceeding. Replacement of CKIN as operator of the rail line is not predicated on dissatisfaction with CKIN's service at any time in the past, but rather is based on the Town's desire for a change of operators upon expiration of the existing Operating Agreement by its terms. The Town has an absolute contractual right to do so regardless of the absence of any alleged default by the incumbent rail carrier.

**TOWN OF NORTH JUDSON SHORTLINE RAILROAD
REQUEST FOR PROPOSALS (RFP)**

June 15, 2016

AMENDED June 17, 2016

Pursuant to Section 3.5.2 of the RFP, the Town is amending the below RFP and is redistributing it to all known parties of interest and posting it for public inspection. This amended RFP supersedes any previous version and replaces all previous versions in totality.

1.0 INTRODUCTION

Through the issuance of this Request for Proposals ("RFP") the Town of Judson (the "Town" or "North Judson") is hereby soliciting competitive proposals from potential entities capable of entering into a lease of the Rail Line (defined below) from the Town (the "Lease Transaction"), while promoting economic development in the Town and surrounding counties. This RFP is not a solicitation for proposals to privatize the Rail Line, as the Town will retain ownership of the Rail Line. But rather, the Town seeks to benefit from an entity that can better leverage the private sector's railroad and real estate experience, economic and community development experience and capital access in partnership with the Town. In addition, the Town desires to improve the speed and efficiency of communication between the operator of the Rail Line and the Town.

The selected lessee (the "Lessee") will be expected to collaborate with the Town as well as the Counties of Starke, Porter and LaPorte, counties through which the Rail Line passes. In addition, the Rail Line currently provides rail services that benefit the Hoosier Valley Railroad Museum (the "Museum") and on-line shippers, Co-Alliance, LLP ("Co-Alliance") and Kova Ag Products ("Kova"). Finally, the Rail Line is operated under a Railroad Operating Agreement between the Town and Chesapeake and Indiana Railroad, Incorporated (CKIN), dated as of August 31, 2004 (the "Operating Agreement"). Respondents may work with any rail line operator and the selected Lessee will have the right to negotiate the terms of any necessary contract as it deems appropriate and in the best interest of the Town.

Each respondent should submit a plan to lease the Rail Line pursuant to a lease agreement with a term up to ten (10) years and that complies with any directive by the Surface Transportation Board (STB)(the "Lease Agreement") and coordinate with the operator of the Rail Line, to create and execute economic development strategies using the Rail Line that benefit the Town and surrounding counties. A respondent should highlight in its proposal its experience leasing railroad-related real estate as well as creating and executing economic development solutions that are innovative, creative and feasible.

2.0 OVERVIEW

2.1. Rail Line History

Proposals by corporations must be executed in the corporate name by an individual authorized to sign. The corporate address must be shown below the signature. Proposals by partnerships must include the official business address of the partnership and the state/country of organization must be shown below the signature. Proposals by a joint venture must be similarly executed by all joint venture partners. Unsigned proposals will be considered non-responsive.

4.4 Statutory Requirements

This RFP is intended to comply with IND. CODE § 36-1-11-12, IND. CODE § 5-3-1 and other applicable federal and state laws. Pursuant to Ind. Code § 36-1-11-12, the Town is authorized to use this RFP process. ~~Indiana law prohibits the Town from leasing the Rail Line to any "ineligible person," defined in IND. CODE § 36-1-11-16 as a person who owes delinquent taxes, special assessments, penalties, interest or costs directly attributable to a prior tax sale on a tract of real property listed on the delinquent list under IND. CODE § 6-1.1-24-1, or a person who is an agent of an ineligible person.~~ All eligible respondents must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals.

4.5 Security

~~The Town may require that the Lessee provide security for performance of its obligations under the Lease Agreement, including through a guaranty, letter of credit and/or an operation and performance bond. Respondent shall demonstrate its ability to obtain an instrument of security sufficient to cover a ten (10)-year lease arrangement should it be selected as the Lessee.~~

5.0. CRITERIA FOR SELECTION

5.1. Overview of Selection Process

 The Town will review the proposals and may invite selected members from the Museum, the North Judson Railroad Committee, shippers on the line and/or the Town attorneys to participate in the review of some or all of the sections of the proposals. Respondents may be asked to submit more detailed written information regarding operational and business planning as well as participate in an interview, or be available for a physical inspection of the property at the convenience of the Town. The chosen respondent will be invited to enter into a Lease Agreement with the Town of North Judson.

5.2. Ranking of Selection Criteria

The categories of the Selection Criteria and their relative weight are as follows:

<u>Issue/section</u>	<u>Pct.</u>
Qualifications of Respondent*	30%
Economic and Community Development	30%
Operations	20%

ed, as every member of the
ing was captured by the end
but few of them ever made it
Most of them found them-
the end of a hangman's

as it that most of the foot
recovered.

tribution by Robert Barcus,
HVRM



Waiting On Integrity

Lake State
Railway out
of Saginaw,

Welcome New Members

son, Fishers IN. Bert &
araiso IN. Jeff Ashby,
Richard Sytsma,
le Radovich, Chicago

siness membership
duled for Saturday,
the depot.

Elections 2017

e advised of the
to the Annual
January 21,

posted in the
who wishes to
ecretary and

Michigan was selected by the Town
Council of North Judson to enter into
a lease for the 33-mile rail line, which
the Town has ownership. This selec-
tion was done around July 21. August
11 in downtown Chicago, representa-
tives of the Town, HVRM, CoAlli-
ance and Lake State Railway had a
meeting and afterwards lunch. As of
this writing, there has been no an-
nouncement of an executed lease of
the rail line.

As of this writing, HVRM has not
been able to operate a single trip to
LaCrosse this year, nor to Thomaston,
or the Hanna Festival. The present
operator of the rail line, the Chesa-
peake & Indiana Railroad Co., is sim-
ply being an ass. The operating
agreement between this operator and
the Town has expired, and here tell
this operator has no plans on voluntar-
ily leaving. Therefore, the forced re-
moval from the rail line will cost eve-
ryone more unnecessary expense;
keeping to a pedigree of dishonesty
and greed.

Mark Knebel
Secretary

e address: www.hoosiervalley.org



Over the last several months, the museum has been embroiled in a situation that may have long-lasting negative impacts on our efforts to fulfill our mission. The museum successfully spearheaded an effort to preserve the 33-mile rail corridor along the remaining portion of the Chesapeake & Ohio's Wabash Subdivision back in 2004. The entire story about the efforts of the museum can be read on our website at hoosier-valley.org/fullstory that shows just how involved the museum has been.

It has always been the explicit intent of the museum to make sure that rail line stays open. HVRM Secretary Mark Knebel wrote to the Surface Transportation Board on December 10, 2003, stating, "Hoosier Valley Railroad Museum has the abilities and desire to establish a tourist train operation over a segment of the railroad line, but most important is the desire to see a 'railroad' connection to the outside world remain a viable option."

Over the next several months, the museum worked hard to bring local politicians, government agencies and shippers together in an effort to save the railroad. Those efforts were ultimately successful and the rail corridor was purchased using Federal Highway Administration funds administered by the Indiana Department of Transportation with one clear stipulation:

"Purchase of the rail line to maintain a rail corridor for railway excursions from the transportation museum (HVRM). Additional freight activities will not be allowed to operate to the detriment of the historical railway museum located in North Judson and its railway excursions. Any income derived from use of the tracks for

of the railroad will go to the benefit of the transportation railroad museum."

Unfortunately, we feel that the spirit of the original agreement has fallen by the wayside. There are those who would seek to extinguish our museum's ability to operate our trains through a series of hostile actions. The original partnership that the museum forged in the beginning to save the railroad has now been trumped by more self-serving commercial interests that are focused on keeping our trains off the tracks.

We cannot and will not sit idly by while everything we have worked for is stripped away. HVRM has invested a great deal of money, materials and volunteer hours to make sure that the railroad stays open.

As a result, the HVRM membership approved a resolution last May to support the Town of North Judson in their search for a more responsible shortline operator. Unfortunately, the situation had degraded to the point where we have genuine concerns.

The fate of the museum may now be determined by a mix of government bureaucrats that have a skewed perspective of the situation. This is thanks to the less-than-accurate story being told to them by attorneys for those self-serving commercial interests mentioned earlier. That is why the museum has opted to hire our own legal counsel and why we have chosen to fight.

Throughout this process, there have been a number of accusations made in regards to this matter in various public forums and STB filings. Let us set the record straight on several points:

The museum does not advocate the abandonment of any portion of the railroad.

It is not the intent of the museum to become a common carrier and take over the operations of the shortline.

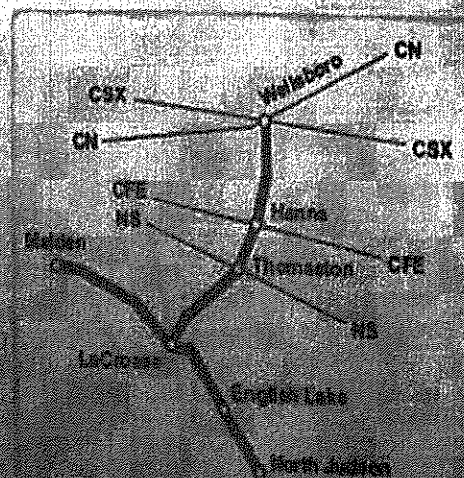
shortline railroad.

We have always encouraged economic development that would bring additional businesses and increased freight traffic onto the railroad.

HVRM would like nothing more than to partner with a responsible shortline operator. We feel that a strong working relationship between all involved parties is necessary for the future success of the railroad. However, given the current climate, this seems to be a distant possibility.

Over the last several years, we have experienced first-hand what happens when certain parties decide to create an adversarial situation. This situation has produced a negative financial impact on the museum with lost revenue opportunities and increased insurance premiums. Since 2006, the museum has carried 42,670 passengers over the former C&O rail corridor, fulfilling our promise to educate the public about the railroad's historical significance. It is our duty to continue this vital educational initiative and we will not be swayed into giving up.

Robert Barcus
Treasurer



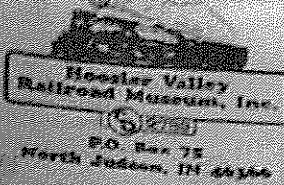
Email address: hvr@hoosiervalley.org

Web Site address: www.hoosiervalley.org

Secretary's Desk

June 2015

On August 11, 2014, the Town of North Judson entered into a contract with Hoosier Valley Railroad Museum, Inc. (HVRM) for the operation of the rail line. The railroad operating agreement is scheduled to expire on December 31, 2015. The Town intends to replace HVRM as operator of the rail line as of January 1, 2016, or as soon thereafter as possible. HVRM has made a known to the Town that HVRM will not voluntarily discontinue operations on the rail line as of expiration of the railroad operating agreement. Accordingly, it will be necessary for the Town to file an application with the Surface Transportation Board in Washington, D.C. for discontinuance of HVRM's federal authority to operate over the rail line. HVRM is a corporate child of Indiana Boxcar Corporation (IBC), of Carmel, Indiana. Mr. R. Powell Fox is owner and president of IBC, and the president of HVRM.



RESOLUTION

As the general membership meeting of the Hoosier Valley Railroad Museum, Inc. on May 20, 2015, the following resolution was proposed and approved by the membership:

WHEREAS the membership does hereby support the decision made by the Town of North Judson in regards to the recent Adverse Discontinuance of Service filed with the Surface Transportation Board (Docket No. AB-1232);

WHEREAS the membership does hereby support the decision by the Town of North Judson to search for a new, more responsible railroad operator, in so much that the new operator shall assure the continued success of the museum's operations;

Signed:

Gary Bennett
President

Doug Kosloske
Vice President

Mark W. Kiesel
Secretary

Robert Barous
Treasurer

Robert C. Albert
Director

Robert C. Albert
Director

Robert C. Albert
Director

The next business membership meeting is on Saturday morning, Sept 19 at 8am. *Scout's Rails & Trails day.*

A question was asked at the meeting about storing empty rail cars in the future. Recently, the board of directors have decided to not resume rail car storage until a new more responsible operator for the Town's rail line is appointed by the Town. The present operator's contract expires on December 31, 2015 and the operator CKIN has been notified that they will not be renewed.

An agreement was executed to store 50 empty hopper cars in May of 2013 between HVRM and LDAI. The cars were sent, and the short line operator CKIN delivered all 50 cars to North Judson along with additional cars that CKIN was going to store in North Judson. CKIN informed HVRM to leave the HVRM allotted storage cars on CKIN tracks and not take over to HVRM tracks, CKIN further invoiced LDAI for the storage revenue that HVRM was to receive under the agreement with LDAI. LDAI honored their agreement and sent HVRM their car store revenue. CKIN called it a misinterpretation. I call it dishonesty.

Mark W. Knebel, Secretary

**Short
8/2015**

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ring. Under
rted that the
north fence
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posts every
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off the old
sake. The

Shortline Dispute Cuts Museum Excursions

At the beginning of May, volunteer crews from the Hoosier Valley Railroad Museum discovered a derail device placed on the railroad at milepost 218, preventing its scheduled excursion from operating all the way to La Porte. There is an ongoing legal dispute over control of the line owned by the Town of North Judson and operated by the Chesapeake & Indiana Railroad. The operator intends to use a portion of the line to store freight cars, which means longer excursions to La Porte will be suspended indefinitely. The museum is seeking reconsideration of the situation since it is one of the parties that helped secure funding for the purchase and rehab of the line.

PHOTO BY BOB BARCUS



Ex. H

Powell Felix

From: [REDACTED]
Date: Thursday, October 13, 2016 9:09 PM
To: "Powell Felix" <ibcx@frontier.com>
Subject: 9/24/16

Greetings -

The day started out early with Tom Rainford, Mark Knebel, John LaOrange and yours truly, going up to the southeast side of Chicago. Bud Tibbie had talked to the Lake Shore Model Railroad Association about donating an old steam locomotive bell and headlight to the museum, and this was the morning that the two items were going to be picked up. The first photo shows the old kerosene lantern type headlight in the back of my van (please excuse my reflection in the headlight's glass lens) after I had gotten it to the museum. The bell was transported in Mark Knebel's pickup truck. The second photo shows (from left to right) Bob Albert, Tom and Mark as they work to get the bell out of Bing Risley's loader and the third shot shows Mark and Tom and Bob pushing it up the ramp into the Pullman Troop Sleeper for temporary display. Mark and I then carried the bigger, but lighter, headlight into the Troop Sleeper. Thanks much to Greg Kelley and the members of the Lake Shore Club for these fine donations!

Our late arrival back to North Judson was close to lunch and I heard that Margrett Cook had made ribs, but before I went over there, I opened up the upper level of Grasselli Tower. On my way to the kitchen car, Doug Kosloske asked me if I could act as car host in Long Island coach 2937, so I got sidetracked from lunch. Power for our 12:30 five car train was to be GE 95 ton diesel number 11, finally cleared for duty once again after a lengthy overhaul. The two open cars were pretty well filled but there were only 6 folks in LIRR 2937. We made the run to English Lake but on the way back, the 11 died. The passengers, which included some adults and kids with special needs, took the delay pretty well, as we informed them that Alco # 310 was on the way to rescue us. When the 310's headlight was spotted down the track, we requested that riders be seated during the coupling. After that was done and the air checked, we started back toward the depot. Unfortunately, a fire developed in the Alco's stack and carbon rained down on the roofs of the cars, and worse still, on the right-of-way. The unit was shut down just east of CR 400W and heavy smoke soon appeared. The passengers thought that the train was on fire, but were assured that it was some dry areas of the vegetation along the track, that had caught fire. An evacuation from the NKP 1946, the first open car on the train was approved, and the fire was attacked with extinguishers. After it was determined that the 310 was going to be inoperable for a time, it was decided to slowly evacuate the train. Mark and Bob and Cory Bennett, drove up from the museum, while the North Judson Fire Department responded to the vegetation fires. Some folks were driven back to the depot area, where they picked up their cars and took passengers back to North Judson. Thanks very much to the crew that did such a good job in the evacuation.

Eventually, number 310 was fired up and uncoupling number 11 from the train, slowly transported the G.E. back to the museum. I took the fourth photo out of Grasselli's west window as the Alco crept past 2789 and the Shop. The fifth shot shows the units crossing Mulberry Street after Mark has dropped off and prepares to walk back to the Shop switch. As the 310 rolls by the tower, the damage to the unit stack is apparent in the sixth photo. After the 2789 and the 11 were put into the Shop on track 1, the 310 made its way back out and brought

the 5 car train back to the museum.

An eventful day to say the least! Have a good week everyone. Fall is now officially here and temps are supposed to cool off this week.

Les

EX-1

Powell Felix

From: "Jim Montgerard" <jwmontgerard@yahoo.com>
Date: Friday, September 16, 2016 5:08 PM
To: "Powell Felix" <ibcx@frontier.com>
Attach: CKIN_Joint Freight and Passenger Operating Protocols.pdf
Subject: Fwd: LaCrosse Trips Sept 24, Oct 1 & 29.

Sent from my iPhone

Begin forwarded message:

From: "Mark Knebel" <knebel99@centurylink.net>
Date: September 16, 2016 at 3:09:03 PM CDT
To: "Jim Montgerard" <jwmontgerard@yahoo.com>
Cc: "Alicia Collins" <njclerk@embarqmail.com>
Subject: **LaCrosse Trips Sept 24, Oct 1 & 29.**

Hello Jim,

HVRM desires to resume the LaCrosse train schedule.

Please plan on HVRM trains for Saturday Sept 24 and Oct 1. Both these trains will depart North Judson for LaCrosse at 2pmCT.

Also, the annual HVRM Halloween Train will depart North Judson for LaCrosse at 4pm on Saturday, October 29. Layover at LaCrosse library for approximately 1-hr for kids animal show.

Please remove the derail and clear the track for these three remaining scheduled LaCrosse trains for this year.

Find attached a operating protocols to help facilitate these planned HVRM excursions.

(Please confirm these trips by or before next Friday noon-Sept 23.)

Thanks Jim.

Mark Knebel
HVRM
574-225-0255 c

10/6/2016



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

OCT 04 2016

~~Mr. Mark Knebel~~
Secretary, Board of Directors
Hoosier Valley Railroad Museum, Inc.
P.O. Box 75
North Judson, IN 46366

Re: Docket Number FRA-2006-24647

Dear Mr. Knebel:

This letter is in response to the Hoosier Valley Railroad Museum, Inc.'s (HVRM) April 1, 2016, petition to the Federal Railroad Administration (FRA) requesting an extension of an existing waiver of compliance from certain provisions of Title 49 Code of Federal Regulations (CFR) Part 219, *Control of Alcohol and Drug Use*. Specifically, HVRM seeks a waiver from 49 CFR Section 219, Subpart D, Testing for Cause; Subpart G, Random Alcohol and Drug Testing Programs, and Subpart E, Identification of Troubled Employees.

HVRM also requested a modification to the territory that the waiver applies to:

- North Judson Milepost (MP) 212.7 (End of Track) to Malden MP 230.8 (End of Track).
- LaCrosse MP 0.5 to Wellsboro (Union Mills) MP 15.3
- Inclusive of Wye connection at MP 222.8 and MP 0.5 LaCrosse.

(Note: passenger trains will not operate on any excepted track.)

This request was assigned the original Docket Number FRA-2006-24647.

HVRM is requesting an extension of its existing waiver due to its limited weekend operating schedule and Chesapeake & Indiana Railroad's (CKIN) weekday schedule. On those few occasions each year where local communities have festivals, the two carriers maintain communication regarding HVRM's operation times.

FRA's Railroad Safety Board reviewed the waiver petition, the results of the field investigation, and the technical staff findings, and determined that granting an extension of HVRM's request for regulatory relief is in the public interest and consistent with railroad safety. Accordingly, this waiver extension is granted, subject to the following conditions:

1. This waiver extension is granted for continued relief from Federal reasonable cause testing, random testing, and from the requirement to have voluntary and coworker report

policies. HVRM must continue to comply with the Federal reasonable suspicion and pre-employment drug testing regulations, currently in 49 CFR 219 Subparts D and F, Pre-employment Tests.

2. Operation of the HVRM tourist train is limited to 16.5 miles on CKIN and has been modified with this waiver request to include the term "end of track." HVRM will operate from North Judson MP 212.7 (End of Track) to Malden MP 230.8 (End of Track), LaCrosse MP 0.5 to Wellsboro (Union Mills) MP15.3, and inclusive of Wye connection at MP 222.8 and MP 0.5 LaCrosse.

(Note: passenger trains will not operate on any excepted track.)

FRA reserves the right to modify or rescind the waiver upon change of regulatory requirements or receipt of information pertaining to the safety of railroad operations or in the event of noncompliance with any condition of this waiver.

This waiver expires five years from the date of this letter. At the conclusion of the 5-year period, FRA reserves the right to extend the waiver if conditions warrant and HVRM has made a written request for an extension to FRA's Office of Railroad Safety at least 6 months prior to the expiration date. Any request for extension must comply with the filing requirements of 49 CFR §§ 211.7, *Filing Requirements*, and 211.9, *Content of rulemaking and waiver petitions*, and must also be submitted via email to FRAWaivers@dot.gov.

In any future correspondence regarding this waiver, please refer to Docket Number FRA-2006-24647. If you have any questions regarding this waiver, please contact Mr. Jerry Powers, FRA Drug and Alcohol Program Manager at (202) 493-6313 or Gerald.Powers@dot.gov.

Sincerely,



Robert C. Lauby
Associate Administrator for Railroad Safety
Chief Safety Officer

Powell Felix

EX. K

From: "Jim Montgerard" <jwmontgerard@yahoo.com>
Date: Thursday, March 3, 2016 6:08 AM
To: "Powell Felix" <ibcx@frontier.com>
Subject: Fwd: HVRM Schedule Update 3/3/16

You're going to love this.

Sent from my iPhone

Begin forwarded message:

From: "Mark Knebel" <knebel99@centurylink.net>
Date: March 3, 2016 at 4:39:20 AM CST
To: "Jim Montgerard" <jwmontgerard@yahoo.com>
Cc: "Rob Byrd" <robertbyrd.ckin@yahoo.com>
Subject: **HVRM Schedule Update 3/3/16**

CKIN,

HVRM schedule updates:

Sunday, April 3 - HVRM motor car run/ Great Lakes Railcars. **North Judson - Malden.**

Saturday, August 13 - HVRM trains - Hanna Festival - **Hanna to Union Mills.**

Mark Knebel
HVRM
574-225-0255 c

3/3/2016



Lincoln Transportation Insurance Brokers Inc.

5920 Airport Road, Oriskany, NY 13424
800-722-7722 www.lincolnins.com

November 7, 2016

Powell Felix
Chesapeake & Indiana Railroad
916 Vine St.
Connersville, IN 47331

Re: Town of North Judson

Powell,

Following is a summary of the advice and comments that I had provided to you previously and our understanding of the potential risk and exposure.

Lincoln has been Chesapeake & Indiana Railroad's (CKIN) Insurance Broker since 2011 and has over 40 years of experience in providing insurance to the Rail Industry.

It is our understanding that CKIN entered into an Operating Agreement with the Town of North Judson (Town) in 2004 for 33 miles of track that the Town acquired from CSX. Within that Agreement, Section 4 requires CKIN to allow Hoosier Valley Railroad Museum (HVRM) the right to operate over the rail line with verbiage requiring them to do so "consistent with safety, liability and regulatory considerations for passenger excursion operations pursuant with Preservation and Educational goals". Section 14 of the agreement outlines CKIN's insurance requirements and liability obligations to the Town and the Town's obligations to CKIN. This section does not address any liability between CKIN and HVRM and this is not addressed anywhere else in the Agreement.

In 2013 we were made aware of a passenger liability claim that arose from a derailment suffered by HVRM in 2011. The passenger named CKIN as a defendant in the claim and defense was tendered by CKIN to HVRM. Subsequently HVRM denied defense and coverage to CKIN although CKIN had a certificate of insurance showing them as an additional insured. While this letter is not intended to discuss the specific details involving the claim, it is our intent to advise that the lack of any formal contract between CKIN and HVRM did impact the claim. In our capacity as insurance Broker, we assist our insured's with recognizing liability exposures and providing advice on how they can try to reduce those exposures. In this case, it was advised by our office that an Agreement should have been in place that outlines the expectations of each party. In this case, no such Agreement existed and CKIN was a responsible for their own defense in the loss because of it.

Because of this added exposure and staying consistent with industry standards, CKIN requested HVRM to increase their limit of liability to the same \$10m that CKIN carries. This request was made many times over the past few years but it was not until 2016 when CKIN received a certificate of insurance from HVRM showing the higher limit and CKIN as an additional insured but still without the benefit of a formal Agreement.

It is our recommendation that there should always be a contract involved in most situations and especially relationships similar to that between CKIN, HVRM and the TOWN. A contract describes the expectations and obligations of each party regarding the relationship and those obligations extend to the insurance carrier as an Insured Contract. Some of the sections of a contract would describe:

1. The types of insurance and minimum policy limits that are required
2. Description of Responsibilities – including in the event of an accident
3. Describes Regulatory Compliance Obligations
4. When insurance is primary to other insurance
5. Responsibilities when both parties are named in a suit
6. Indemnification and defense of a claim
7. Binds each party to the terms and conditions of the contract

The best and most prudent way to manage Business Risk is to enter into a contract that would establish the relationship between two parties and define each party's responsibilities and expectations. The absence of an Agreement leaves Risk subject to interpretation of responsibilities and Ambiguity in the event of a loss. This is not in the best interest of either party.

CKIN has been affected in the past by a loss suffered by HVRM that cost CKIN, at least in part, because of the lack of an Agreement that identified the risk and responsibility. Our recommendation to all of our clients is to require a contract whenever possible.

Regards,



Beth Garguilo

VP Marketing and Client Relationships

EXHIBIT A

STATE OF INDIANA)
) SS:
COUNTY OF LAPORTE)

IN THE LAPORTE CIRCUIT COURT
CAUSE NO.: 46C01-1610-PL-_____

THE CHESAPEAKE AND INDIANA)
RAILROAD COMPANY INC.)

Plaintiff,)

v.)

INCORPORATED TOWN OF)
NORTH JUDSON)

Defendant.)

APPEARANCE BY ATTORNEY IN CIVIL CASE

1. The party on whose behalf this form is being filed is:
Initiating X Responding _____ Intervening _____;
2. The undersigned attorney and all attorneys listed on this form now appear in this case for the following parties:

The Chesapeake and Indiana Railroad Company Inc.
916 Vine Street
Connersville, IN 47331

3. Attorney information for service as required by Trial Rule 5(B)(2)

Name:	David M. Stupich	Attorney Number: 32166-79
Address:	Stuart & Branigin LLP	Phone: (765) 423-1561
	300 Main Street, Suite 900	Fax: (765) 742-8175
	Lafayette, IN, 47902	E-mail: dms@stuartlaw.com
	P.O. Box 1010	

4. This is a Civil Plenary case type as defined in administrative Rule 8(B)(3).

5. I will accept service from other parties by:

FAX at the above noted number: Yes _____ No X

Email at the above noted address: Yes ____ No X

6. This case involves child support issues. Yes ____ No X (If yes, supply social security numbers for all family members on a separately attached document filed as confidential information on light green paper. Use Form TCM-TR3.1-4.)
7. This case involves a protection from abuse order, a workplace violence restraining order, or a no – contact order. Yes ____ No X (If Yes, the initiating party must provide an address for the purpose of legal service but that address should not be one that exposes the whereabouts of a petitioner.) The party shall use the following address for purposes of legal service:

Stuart & Branigin LLP
300 Main Street, Suite 900
P.O. Box 1010
Lafayette, IN, 47902

8. This case involves a petition for involuntary commitment. Yes ____ No X
9. There are related cases: Yes ____ No X (If yes, list on continuation page.)
10. Additional information required by local rule: NONE
11. There are other party members: Yes ____ No X (If yes, list on continuation page.)
12. This form has been served on all other parties and Certificate of Service is attached:
Yes ____ No X

Respectfully Submitted,



David M. Stupich (32166-79)
STUART & BRANIGIN LLP
300 Main Street, Suite 900
Lafayette, Indiana 47902
Phone: (765) 423-1561
Fax: (765) 742-8175
Attorney for Plaintiff

865474_1

STATE OF INDIANA)
) SS:
COUNTY OF LAPORTE)

IN THE LAPORTE CIRCUIT COURT

CAUSE NO.: 46C01-1610-PL-_____

THE CHESAPEAKE AND INDIANA)
RAILROAD COMPANY INC.)

Plaintiff,)

v.)

INCORPORATED TOWN OF)
NORTH JUDSON)

Defendant.)

APPEARANCE BY ATTORNEY IN CIVIL CASE

1. The party on whose behalf this form is being filed is:
Initiating X Responding _____ Intervening _____;
2. The undersigned attorney and all attorneys listed on this form now appear in this case for the following parties:

The Chesapeake and Indiana Railroad Company Inc.
916 Vine Street
Connersville, IN 47331

3. Attorney information for service as required by Trial Rule 5(B)(2)

Name:	Stephen R. Pennell	Attorney Number: 5683-79
Address:	Stuart & Branigin LLP 300 Main Street, Suite 900 Lafayette, IN, 47902 P.O. Box 1010	Phone: (765) 423-1561 Fax: (765) 742-8175 E-mail: srp@stuartlaw.com

4. This is a Civil Plenary case type as defined in administrative Rule 8(B)(3).
5. I will accept service from other parties by:

FAX at the above noted number: Yes ____ No X

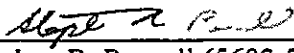
Email at the above noted address: Yes ____ No X

6. This case involves child support issues. Yes ____ No X (If yes, supply social security numbers for all family members on a separately attached document filed as confidential information on **light green paper**. Use Form TCM-TR3.1-4.)
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Stuart & Branigin LLP
300 Main Street, Suite 900
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Lafayette, IN, 47902

8. This case involves a petition for involuntary commitment. Yes ____ No X
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10. Additional information required by local rule: NONE
11. There are other party members: Yes ____ No X (If yes, list on continuation page.)
12. This form has been served on all other parties and Certificate of Service is attached:
Yes ____ No X

Respectfully Submitted,



Stephen R. Pennell (5683-79)
STUART & BRANIGIN LLP
300 Main Street, Suite 900
Lafayette, Indiana 47902
Phone: (765) 423-1561
Fax: (765) 742-8175
Attorney for Plaintiff

843234_1

STATE OF INDIANA	)	IN THE LAPORTE CIRCUIT COURT
	) SS:	
COUNTY OF LAPORTE	)	CAUSE NO.: 46C01-1610-PL-_____
THE CHESAPEAKE AND INDIANA	)	
RAILROAD COMPANY INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
INCORPORATED TOWN OF	)	
NORTH JUDSON	)	
	)	
Defendant.	)	

COMPLAINT

Plaintiff, The Chesapeake and Indiana Railroad Company, Inc. (hereinafter "CKIN"), by counsel, states as follows for its Complaint against Defendant the Incorporated Town of North Judson (hereinafter referred to as the "Town"):

Parties

1. CKIN is a for-profit domestic corporation incorporated in the State of Indiana, with its principal place of business in Fayette County, Indiana.
2. The Town is a town located in Wayne Township, Starke County, Indiana.

Factual Allegations

3. Pursuant to Title 36 of the Indiana Code, the Town is governed by a town council (hereinafter the "Town Council").
4. CKIN is a Class III common carrier short-line railroad which operates in the State of Indiana.
5. The rail line that is the subject of this Complaint (the "Rail Line") extends from milepost CF 0.63, at LaCrosse, to milepost CF 15.23, at Wellsboro, and from milepost CI

212.55, at North Judson, to milepost CI 230.92, at Malden, a total of 32.97 miles of trackage in LaPorte, Porter and Starke Counties, IN.

6. Because a majority of the Rail Line is located in LaPorte County, LaPorte County is a county of preferred venue under Trial Rule 75(A)(2).

7. In 2003, the Rail Line's previous owner, CSX Transportation, sought authority from the federal Surface Transportation Board ("STB") under the I.C.C. Termination Act (hereinafter "ICCTA") to abandon certain trackage including the Rail Line.

8. The Town partnered with several public and private entities including, but not limited to, LaPorte County, Porter County, and Starke County for the purpose of raising funds to purchase the Rail Line.

9. Pursuant to Section 10904 of the ICCTA, the Town, using funds provided by the State of Indiana and other sources, submitted an Offer of Financial Assistance (the "OFA") to purchase the Rail Line.

10. In the OFA, the Town represented that it desired to continue common carrier railroad service over the Rail Line.

11. Thereafter, the Town acquired the Rail Line and solicited proposals for an operator for the Rail Line. By acquiring the Line under the OFA procedures the Town became a common carrier railroad subject to the STB's jurisdiction under 49 U.S.C. Subtitle IV.

12. In 2004, the Town selected CKIN as its contract operator; the Town and CKIN entered into a certain Operating Agreement (the "Operating Agreement") dated August 31, 2004. A true and accurate copy of the Operating Agreement is attached to this Complaint as Exhibit "A".

13. By formal amendment, the initial term of the Operating Agreement was extended to December 31, 2015. Ex. A, Amendments One and Two.

14. Pursuant to the Operating Agreement, Hoosier Valley Railroad Museum, Inc. (hereinafter "HVRM"), a 501(c)(3) nonprofit domestic corporation incorporated in the State of Indiana, has the right to operate a passenger excursion service over the Rail Line "consistent with safety, liability and regulatory considerations, for passenger excursion operations pursuant with Preservation and Educational goals." Ex. A at 4.

15. During the initial term of the Operating Agreement, CKIN worked diligently to repair the Rail Line and to the rebuild the Rail Line's traffic base.

16. In doing so, CKIN made significant capital expenditures ("Capital Expenditures") to the Rail Line including repairing, rebuilding and maintaining the Rail Line.

17. As a result of the Capital Expenditures, the value of the Rail Line increased.

18. Under CKIN's stewardship, annual traffic on the Rail Line increased approximately twelve fold.

19. The principal customer of the Rail Line is Co-Alliance, LLP ("Co-Alliance"), an agribusiness with its corporate headquarters in Hendricks County.

20. Co-Alliance owns two grain elevators located along the Rail Line; one elevator is located in the Town of Union Mills (MP 15.0), and the second is located at Malden (MP 230.8).

21. Since the initial term of the Operating Agreement, Co-Alliance has invested approximately \$20,000,000 in its facilities located at Union Mills and Malden.

22. Co-Alliance and CKIN have worked harmoniously to repair, rebuild, and maintain the Rail Line.

23. Beginning in 2014, a dispute arose between CKIN, the Town, and HVRM.

24. Namely, CKIN disagreed with the Town and HVRM concerning HVRM's use of the Rail Line and HVRM's obligations under the Operating Agreement.

25. On March 6, 2015, the Town, through its counsel, provided notice to CKIN of the Town's intent to terminate the Operating Agreement (the "termination notice"). The termination notice stated that the Agreement would be terminated at the end of the December 31, 2015 term.

26. The ICCTA requires rail operators to seek authority from the federal Surface Transportation Board ("STB") to discontinue service before they can actually terminate operations.

27. As a result, CKIN could not immediately terminate operations after receiving the termination notice.

28. On April 16, 2015, the Town initiated discontinuance proceedings at the STB by filing a petition to waive certain discontinuance requirements. The STB granted most but not all of the Town's requests.

29. In the Waiver Notice, the Town stated that it intended to replace CKIN and enter into a new railroad operating agreement with a new operator.

30. Prior to filing the Waiver Notice, the Town did not publish a Request for Proposal to find a successor operator.

31. On information and belief, the Town engaged in discussions with one or more potential operators for the Rail Line prior to publishing a Request for Proposal.

32. Prior to the expiration of the term, CKIN and the Town disagreed over the respective rights of the parties upon the termination of the Operating Agreement.

33. Specifically, Section 10 of the Operating Agreement, entitled "Capital Expenditures by CKIN", provides that "[n]on-removable property improvements paid for wholly

or in part by CKIN shall become the property of the Town, subject to any claim by CKIN as to remaining Book Value of such improvement at the non-renewal expiration or termination” of the Operating Agreement. Ex. A at 8-9.

34. CKIN and the Town disagreed over the character, valuation and calculation of the Capital Expenditures.

35. CKIN and the Town further disagreed over whether the Town could terminate the Operating Agreement.

36. In an attempt to resolve the dispute over the Capital Expenditures and the future service on the Rail Line, CKIN, Co-Alliance and the Town engaged in mediation on December 9, 2015.

37. CKIN, Co-Alliance and the Town entered into a Mediation Agreement dated December 9, 2015 and thereafter supplemented by the Supplement to December 9, 2015 Mediation Agreement which became effective on May 13, 2016. True and accurate copies of the Mediation Agreement, and the Supplement to the December 9, 2015 Mediation Agreement are attached to this Complaint as Exhibit “B” and Exhibit “C”, respectively.

38. Although not specifically stated in the Mediation Agreement, it was the understanding of the parties’ representatives that Co-Alliance would be selected as the lessee of the Rail Line. However, Indiana law required the Town to issue a request for proposals (“RFP”) to solicit bid proposals.

39. If the Town selected Co-Alliance as the lessee of the Rail Line, CKIN would forgo its claims against the Town related to the Capital Expenditures.

40. The Town agreed to accept the Mediation Agreement at the meeting of the Town Council on December 21, 2015.

41. When a governmental entity leases or otherwise transfers real property, Indiana law obligates all governmental entities to comply with applicable procedures related to RFPs and the selection of proposals as set forth in I.C. § 36-1-11-1 *et seq.*

42. On June 15, 2016, the Town published the RFP for the Rail Line (the "June 15 RFP").

43. The Town admitted that it had selected a replacement operator prior to publishing the June 15 RFP.

44. In the June 15 RFP, the Town published certain confidential information belonging to CKIN and concerning traffic on the Rail Line (the "Confidential Information").

45. Under the Operating Agreement, the Town is obligated to maintain the confidentiality of Confidential Information. Ex. A at 19.

46. The disclosure of Confidential Information under Section 27 is an event of default under the Operating Agreement. Ex. A at 19.

47. The Confidential Information includes information for which 49 U.S.C. § 11904(b) prohibits rail carriers such as the Town from disclosing without the consent of the affected rail customers which was never given.

48. The Town's disclosure of the Confidential Information to rail carrier bidders competing with CKIN violated 49 U.S.C. § 11904.

49. The Town admitted that it improperly disclosed the Confidential Information and promised CKIN to take certain remedial measures including the recipients' return and destruction of confidential information; preparation of an apology letter and preparation and return of an affidavit identifying any parties to whom recipients provided that information.

50. The recipients and the Town failed to cooperate with this request.

51. On June 17, 2016, the Town published an amended RFP for the Rail Line (the "Amended RFP").

52. The Town's RFP, and the Town's selection of a proposal, are subject to I.C. § 36-1-11-1 *et seq.*

53. The Town has statutory authority to lease real property only if the Town Council determines that such lease would "be in the best interest of the disposing agent's political subdivision or agency and the public."

54. The Town Council, as disposing agent, was obligated to lease the Rail Line to the "highest and best bidder".

55. During an RFP process, "eligible offerors must be accorded fair and equal treatment."

56. The Amended RFP contained several requirements for operators.

57. Specifically, a respondent is obligated to have a net worth in excess of two million dollars (\$2,000,000).

58. Further, a respondent should "be able to demonstrate that respondent has owned, leased or operated at least three (3) shortline railroads for at least a three (3)-year duration."

59. The Town allowed HVRM, a party with an interest in the outcome of the RFP process, to participate in the carrier selection process.

60. Co-Alliance submitted its bid (the "Bid Proposal") in conjunction with CKIN with CKIN to be Co-Alliance's contractor operator subject to CKIN and Co-Alliance reaching a new operator agreement for the Rail Line.

61. The Town informed Co-Alliance the Bid Proposal would not be accepted.

62. Under I.C. § 36-1-11-4(d), a bid submitted in response to a request for proposal is “open to public inspection.”

63. The Town has nevertheless refused to provide Co-Alliance and CKIN with copies of the other bids that were submitted.

64. On or around July 21, 2016, the Town Council publicly announced that it had selected a proposal from Lake State Railway.

65. CKIN is asserting tort claims against the Town for the Town’s statutory violations of 49 U.S.C. § 11904. and I.C. § 36-1-11-1 *et seq.* (collectively referred to as the “Tort Claims”).

66. On September 6, 2016, CKIN sent notice of the Tort Claims. A copy of CKIN’s tort claim notice is attached to this Complaint as **Exhibit “D”**.

67. Under Indiana law, CKIN cannot maintain an action for the Tort Claims until the Town has denied the Tort Claims in whole or in part. I.C. § 34-13-3-13. In the event the Town denies the Tort Claims in whole or in part, CKIN will seek leave to amend this Complaint to add the Tort Claims.

68. Under Section 9 of the Agreement, the Town is obligated to establish a “Capital Improvement and Maintenance Fund” (hereinafter the “Capital Improvement Fund”). Ex. A at 7-8.

69. Under Section 15 of the Agreement, CKIN is obligated to contribute a portion of the freight revenue it derives from operation of the Rail Line to the Capital Improvement Fund. Ex. A at 11-12.

70. The Town holds proceeds of the Capital Improvement Fund in trust for “the sole purpose of providing track, bridge, and property maintenance and improvements” to the Rail Line (all of which are collectively referred to hereinafter as “Track Maintenance”) Ex. A at 8.

71. The Agreement expressly prohibits the Town from using proceeds of the Capital Improvement Fund for "Town purposes beyond preservation and maintenance of the Rail Line." Ex. A at 8.

72. Pursuant to Section 15 of the Agreement, CKIN is ready, willing and able to make contributions to the Capital Improvement Fund in the amount of \$39,750.

73. CKIN believes the Town will use additional contributions to the Capital Improvement Fund for Town purposes beyond Track Maintenance.

74. CKIN desires to deposit its contributions to the Capital Improvement Fund in an escrow account until it receives further direction from this Court.

COUNT I: BREACH OF CONTRACT

75. CKIN realleges and reaffirms each and every rhetorical paragraph contained in this Complaint, and incorporates the same herein by reference.

76. The Mediation Agreement obligated all parties to act in good faith. Ex. B at 1.

77. On information and belief, CKIN believes the Bid Proposal was the highest and best proposal submitted to the Town to operate the Rail Line.

78. On information and belief, Lake State Railway did not satisfy the criteria of the Amended RFP.

79. In reviewing proposals for the Rail Line, the Town did not afford the Bid Proposal equal treatment.

80. In reviewing the Bid Proposal, the Town failed to act in good faith.

81. The Town's rejection of the Bid Proposal constituted a breach of the Mediation Agreement.

82. As a direct, proximate result of the Town's breach of the Mediation Agreement, CKIN suffered damages in an amount to be proven at trial.

COUNT II: ANTICIPATORY BREACH OF CONTRACT

83. CKIN realleges and reaffirms each and every rhetorical paragraph contained in this Complaint, and incorporates the same herein by reference.

84. Under Section 10 of the Operating Agreement, CKIN is entitled to damages upon termination or expiration of the Operating Agreement. In relevant part, Section 10 provides,

Non-removable property improvements paid for wholly or in part by CKIN shall become the property of the Town, *subject to any claim by CKIN as to remaining Book Value of such improvement* [emphasis supplied] at the non-renewal expiration or termination of this Agreement by either party....Book Value shall be the difference between Cost of Improvement less Depreciation at straight-line, half-year convention, calculated to the end of the previous calendar year prior to contract expiration or termination. Remaining Book Value shall be paid to CKIN only in the event of non-renewal or termination of this Agreement, regardless of cause.

Ex. A at 8-9.

85. CKIN made non-removable property improvements on the Rail Line ("Capital Expenditures").

86. The Capital Expenditures were paid for wholly or in part by CKIN.

87. Pursuant to the Operating Agreement, CKIN is entitled compensation from the Town for the Capital Expenditures upon the termination of the Operating Agreement according to the valuation formula set forth therein.

88. The Town informed CKIN that the Town would not pay CKIN amounts owed to CKIN for Capital Expenditures upon termination of the Operating Agreement.

89. Specifically the Town communicated it would not pay CKIN amounts for the Capital Expenditures according to the formula described in the Operating Agreement.

90. In so informing CKIN that the Town would not pay to CKIN for the Capital Expenditures, the Town breached the Operating Agreement.

91. As a direct, proximate result of the Town's anticipatory breach of the Operating Agreement, CKIN will suffer damages in an amount to be proven at trial.

COUNT III: BREACH OF CONTRACT

92. CKIN realleges and reaffirms each and every rhetorical paragraph contained in this Complaint, and incorporates the same herein by reference.

93. In relevant part, Section 27 of the Operating Agreement provides that the Town will be in default if the Town "discloses to any person or persons not directly associated with Town, all or any portion of Confidential Documents that CKIN provides Town under this Agreement". Ex. A. at 19.

94. The Town nevertheless disclosed the Confidential Documents to the public and unauthorized third parties in the June 15 RFP.

95. The Town's disclosure of the Confidential Documents constituted an event of default and a breach of the Operating Agreement.

96. As a direct and proximate result of the Town's breach of the Operating Agreement, CKIN suffered damages in an amount to be proven at trial.

COUNT IV: BREACH OF CONTRACT

97. CKIN realleges and reaffirms each and every rhetorical paragraph contained in this Complaint, and incorporates the same herein by reference.

98. The Mediation Agreement and supplement thereto contemplated that the Town would follow all statutory procedures applicable to the RFP process. Ex. C.

99. The Town breached the Mediation Agreement by failing to follow the statutory RFP requirements.

100. As a direct and proximate result of the Town's breach of the Mediation Agreement, CKIN suffered damages in an amount to be proven at trial.

COUNT V: DECLARATORY RELIEF

101. CKIN realleges and reaffirms each and every rhetorical paragraph contained in this Complaint, and incorporates the same herein by reference.

102. The Agreement does not allow the Town to use proceeds of the Capital Improvement Fund for purposes other than for Track Maintenance. Ex. A at 8.

103. On information and belief, the Town has used proceeds of the Capital Improvement Fund for purposes other than for Track Maintenance.

104. On information and belief, if CKIN makes additional contributions to the Capital Improvement Fund, the Town will use such contributions for purposes other than for Track Maintenance.

105. Pursuant to Ind. Code § 34-14-1-1 *et seq.* and Indiana Trial Rule 57, this Court has the authority to grant declaratory relief to any person interested in a written contract or whose rights, status, or other legal relations are affected by a contract.

106. An actual controversy exists between the Town and CKIN as to the proper use of the Capital Improvement Fund.

107. CKIN is a party to the Agreement and seeks declaratory relief as to the proper construction of the Agreement.

108. CKIN requests the Court grant declaratory relief which prohibits the Town from using the Capital Improvement Fund for any purpose other than for Track Maintenance.

WHEREFORE, Plaintiff, The Chesapeake and Indiana Railroad Company, Inc., prays the Court enter a judgment in its favor and against the Town of North Judson as follows:

1. Award Plaintiff damages in the amount owed by Defendant Town of North Judson under the Operating Agreement, plus pre-judgment and post-judgment interest, costs, and reasonable attorney's fees;
2. Award Plaintiff damages for the Defendant Town of North Judson's breaches of the Operating Agreement, plus pre-judgment and post-judgment interest, costs, and reasonable attorney's fees;
3. Award Plaintiff damages for the Defendant Town of North Judson's breach of the Mediation Agreement, plus pre-judgment and post-judgment interest, costs, reasonable attorney's fees;
4. Declare that the Capital Improvement Fund may not be used for any purpose other than for repair and maintenance of the Rail Line;
5. Allow the Plaintiff to deposit contributions to the Capital Improvement Fund into an escrow account maintained by this Court or an appropriate custodian; and
6. Award Plaintiff damages for the Defendant Town of North Judson's violation of statutory requirements applicable to the RFP process, plus pre-judgment and post-judgment interest, costs, reasonable attorney's fees, and all other relief as is just and proper in the premises.

Respectfully Submitted,



Stephen R. Pennell (5683-79)
David M. Stupich (32166-79)
STUART & BRANIGIN LLP
300 Main Street, Suite 900
Lafayette, Indiana 47902
srp@stuartlaw.com
Phone: (765) 423-1561
Fax: (765) 742-8175
Attorneys for Plaintiff

837409_9

STATE OF INDIANA)
) SS:
COUNTY OF LAPORTE)

IN THE LAPORTE CIRCUIT COURT
CAUSE NO.: 46C01-1610-PL-_____

THE CHESAPEAKE AND INDIANA)
RAILROAD COMPANY INC.)

Plaintiff,)

v.)

INCORPORATED TOWN OF)
NORTH JUDSON)

Defendant.)

SUMMONS

FROM THE LAPORTE COUNTY CLERK OF COURTS

TO: Town of North Judson
ATTN: Town Council
310 Lane Street
North Judson, IN 46366

You have been sued by the person named "plaintiff" in the court stated above.

The nature of the suit against you is stated in the Complaint which is attached to this document. It also states the demand which the plaintiff has made and wants from you.

You must answer the Complaint in writing, by you or your attorney, within twenty (20) days, commencing the day after you receive this summons, or judgment will be entered against you for what the plaintiff has demanded.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

Date: _____, 2016

Clerk, LaPorte County

The following manner of service of summons is hereby designated

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

ATTORNEY FOR PLAINTIFF:

Stephen R. Pennell
Stuart & Branigin LLP
300 Main Street, Suite 900
Lafayette, IN, 47902
P.O. Box 1010

Attorney Number: 5683-79
Phone: (765) 423-1561
Fax: (765) 742-8175
E-mail: srp@stuartlaw.com

RAILROAD OPERATING AGREEMENT

This Agreement, made this 31st day of August 2004 between the Incorporated Town of North Judson Indiana (Town) and the Chesapeake and Indiana Railroad, Incorporated (CKIN) witnesses that,

Whereas, Town is acquiring approximately thirty-three miles of railroad from CSX Transportation extending from Wellsboro, IN to LaCrosse, IN and from North Judson, IN to Malden, IN described under "Definitions", hereinafter "Rail Line", and,

Whereas, CKIN desires to operate the Rail Line for Town and Town has agreed to have CKIN operate the Rail Line under the terms and conditions set forth herein,

Now Therefore, in consideration of the mutual benefits derived from such an arrangement, the parties agree to be mutually bound as follows:

1. Definitions:

As used in this Agreement

- A) "Rail Line" means the ex-CSXT line of railroad described as the Western Region, Chicago Division, Wabash Subdivision, extending from Milepost CF 0.23 at LaCrosse to Milepost CF 15.23 at Wellsboro and from Milepost CI 212.55 at North Judson to Milepost CI 230.92 at Malden, a total distance of approximately 33.37

miles in LaPorte, Porter, and Starke Counties, Indiana, purchased by the Town for the purposes of Historic Rail Preservation and Operation.

- B) "INDOT Agreement" means the Agreement for Transportation Enhancement Funds between the Indiana Department of Transportation and the Town of North Judson, dated July 13, 2004.
- C) "Book Value" means the difference between initial asset cost and remaining undepreciated cost per IRS Depreciation Standards as outlined in IRS Publication 946 or its subsequent replacement, at MACRS standard asset life classifications, with depreciation calculated at a straight-line, half-year convention methodology, including specific railroad asset class designations for track and improvements.
- D) "Capital Improvement Fund" means a designated bank account held by the Town, for the sole purposes of providing capital and ongoing maintenance funds for track and property maintenance not provided per agreement by CKIN.
- E) "Museum" shall mean the Hoosier Valley Railroad Museum, Inc., North Judson, IN, a 501c(3) Nonprofit incorporated for preservation and educational purposes

2. Rail Line

Upon the closing of the purchase transaction with CSX Transportation, Town will own the property designated as the "Rail Line". The Rail Line shall include all land, track, bridges, structure and improvements thereon. CKIN shall have access to all parts of the Rail Line as may be required for common-carrier railroad freight operations. Title to the Rail Line shall at all times remain with Town and CKIN shall make no claim upon the Rail Line other than that expressly provided herein.

Title to all locomotives, rolling stock, vehicles, machinery, inventory, and equipment provided by CKIN for the operation of the Rail Line shall remain with CKIN and not become a part of the Rail Line.

3 Initial Inspection

CKIN and Town, with any designated representatives, shall perform an initial joint inspection of "Rail Line" within the first sixty days from initial operations, documenting existing conditions of assets, not limited to but including a detailed inventory of initial rail and tie condition, drainage, vegetation and bridge conditions. Specific attention shall be made as to tie, rail, and track geometry defects and conditions that prevent designation of FRA Class 1 or Class 2 passenger operations over the Rail Line from Milepost CI 223 (LaCrosse) to Milepost CI 212.55(N. Judson Museum Connection), and portions inclusive of the Wye connecting trackage at LaCrosse, and 1000' west of the point of switch (to Malden) and 1000' north of the point of switch (to Wellsboro). Portions of the Rail Line between that are found to be in current acceptable FRA class above "Excepted" shall be maintained by CKIN to not less than FRA 1 track condition between those points during the term of this Agreement. The results of the Initial Inspection defect inventory are to be made available to both parties within 30 days following the completion of the inspection.

4. Operation

CKIN shall exclusively provide all originating and terminating common-carrier rail freight service on the Rail Line. CKIN shall permit the Hoosier Valley

Railroad Museum to use the Rail Line in common with CKIN, consistent with safety, liability and regulatory considerations, for passenger excursion operations pursuant with Preservation and Educational goals. CKIN shall be solely responsible for all cost incurred in the operation of the Rail Line as outlined herein and CKIN shall not permit any vendor to lien or encumber either the Rail Line or Town. CKIN shall be entitled to all freight revenue derived from its operation on the Rail Line and Town shall make no claim upon such revenue unless herein permitted. CKIN shall provide rail service to all customers located along the Rail Line in such a manner as to accommodate those customer's needs. At a minimum, service will be provided by CKIN at least once per calendar week when so needed. CKIN shall enter into such agreements with connecting railroads as may be required to fulfill CKIN's common carrier obligations.

a) Additional Freight Activities and Notification

CKIN acknowledges that it is subject to INDOT Agreement, which states, in part, that increased freight operations may impact the use for the historic railroad excursions and would therefore require additional coordination with FWA Division Office. Therefore, CKIN shall notify Town, and Museum, in writing, of any pending operational change/increase of freight activity on the line that:

- 1) Operates over any portion of Rail Line either currently operating excursion services, or those services that are in written planning stages by Museum;

8. Maintenance

CKIN shall at its sole expense provide such Routine Maintenance to the Rail Line as defined herein. Routine Maintenance shall include those items identified on Schedule A, which is made a part of this Agreement. All materials and labor expended by CKIN in the performance of Routine Maintenance shall become a part of the Rail Line. CKIN shall perform all Routine Maintenance to no less than the FRA Class 1 track standard between Milepost CI 223 (LaCrosse) to Milepost CI 212.55 (N. Judson Museum Connection) and LaCrosse wye trackage as per Article 3 "Initial Inspection". Any portions within those limits found not to be in compliance with FRA Class 1 conditions at the time of Initial Inspection, and subsequently raised to FRA Class 1 as a result of any subsequent Capital Repairs performed by Town, shall be maintained to not less than FRA Class 1 during the terms of this Agreement. The parties acknowledge that the Routine Maintenance contemplated herein is insufficient to keep the Rail Line in operating condition over an extended period of time. The parties agree to mutually cooperate to seek rehabilitation funding from State, Federal, and Local sources to assist in the ongoing maintenance of the Rail Line. CKIN shall supply the Town, within 30 days from the close of the calendar year, a detailed and itemized maintenance and rehabilitation plan for the following calendar year, outlining recommended capital and maintenance items with a cost estimate provided to maintain safe and efficient services to customers and Museum.

9. Capital Improvement and Maintenance Fund

The parties agree to mutually cooperate to seek rehabilitation funding and to establish a maintenance fund to support such rehabilitation funding and cover emergency repairs that may be beyond the scope of Routine Maintenance. Town shall establish and hold a Capital Improvement and Maintenance Fund, for the sole purpose of providing track, bridge, and property maintenance and improvements in addition to those provided by CKIN. All revenues derived by Town in direct result of the ownership of Rail Line by town shall be deposited in this Fund and not used for Town purposes beyond preservation and maintenance of the Rail Line. Revenues are defined, but not limited to, proceeds from Revenue Sharing, right-of-way occupations, rentals of Rail Property, and any fees for museum-related activity. The Capital Improvement Fund, may, at the discretion of the Town, be used for local-match purposes for any future State or Federal grant track-rehabilitation programs.

10. Capital Expenditures by CKIN

CKIN and Town agree that capital expenditures of a permanent and non-removable nature, may, at the option of CKIN, be made upon the Rail Line for the purposes of efficiency and safety in ongoing freight operations. Non-removable property improvements paid for wholly or in part by CKIN shall become the property of the Town, subject to any claim by CKIN as to remaining Book Value of such improvement at the non-renewal expiration or termination of this

Agreement by either party. Such remaining Book Value claim shall be calculated as follows:

- A) Cost of the Improvement shall be documented by receipts and/or submitted written evidence, including date of completion and/or service.
- B) Life of the Improvement shall be subject to IRS Definitions of Asset Life as outlined in IRS Publication 946 or its replacement, MACRS designation, specifically including rail assets.
- C) Book Value shall be the difference between Cost of the Improvement less Depreciation at straight-line, half-year convention, calculated to the end of the previous calendar prior to contract expiration or termination.

Remaining Book Value shall be paid to CKIN only in the event on non-renewal or termination of this Agreement, regardless of cause.

Utilities

CKIN, at its sole cost and expense, shall arrange for and obtain necessary water, electricity, and other utility services required for its use, including ongoing electrical supply to required crossing signal equipment. Town shall not be liable for any such services, or the suspension of such services.

12. Occupation of the Rail Line

Town shall have the exclusive right to all revenue generated from leases, licenses, easements and occupations located along the Rail Line, and to be deposited to the Capital Improvement Fund. . In the event Town elects to grant new leases, licenses or easements for occupations of the Rail Line, such new occupations

shall be subject to the reasonable review by CKIN for impact on the safe operation of the Rail Line. CKIN may charge and collect for its account, a one-time fee based upon complexity of analysis for review of such proposed occupations and CKIN may elect to impose minimum engineering requirements consistent with standard railroad practices on such occupations. CKIN Sample Fee Schedule for the period of this Agreement is Attachment B.

13. Taxes

Each party shall be exclusively responsible for any taxes associated with the revenue it derives through this Agreement. Town shall be responsible for all property taxes, if any, attributable to the ownership of the Rail Line. CKIN shall be responsible for any property taxes associated with the ownership of equipment used on the Rail Line. It is expressly understood that CKIN shall not be responsible for property taxes based on the ownership of the Rail Line and Town agrees to reasonably support CKIN in contesting any such assessment.

14. Insurance and Liability

CKIN shall at all times maintain in effect a general liability policy of limits not less than \$5,000,000 per occurrence. Such policy shall provide 30 days notice prior to termination and CKIN shall name Town as an additional insured on such policy. Failure of CKIN to maintain this general liability insurance shall constitute a material breach of this Agreement as contemplated in Item 26. CKIN shall be responsible for all liability for damage, injury or death resulting from its

operation of the Rail Line. CKIN shall save, defend and hold harmless, Town from such liability. Town shall be responsible for all liability for damage, injury or death resulting solely from its ownership of the real property associated with the Rail Line and not involved in the railroad operation. In the event of a liability claim where claimant names both CKIN and Town in a legal action, each party shall be exclusively responsible for its own court cost and legal fees. Neither party to this Agreement shall compromise or settle a liability claim on behalf of the other party without first obtaining the written consent of the other party. When so requested, each party to this Agreement shall assist the other party in taking such reasonable actions as may serve to mitigate such a claim of liability.

15. Revenue Sharing

CKIN agrees to contribute a portion of the freight revenue it derives from operation of the Rail Line to the Town based upon the following schedule.

Annual Carloads	Revenue Sharing per Carload
1 to 700	none
701 to 900	\$ 10
901 to 1100	\$ 20
1101 to 1400	\$ 30
1401 and above	\$ 35

Revenue Sharing shall apply to all loaded revenue cars originated or terminated by CKIN. On storage cars (empty revenue cars) each day a car is in revenue

storage shall count as one revenue storage day. Every count of 300 revenue storage days shall constitute one annual carload for Revenue Sharing calculations. CKIN shall provide Town a carload count not less than once per calendar quarter and shall make payment for the Revenue Sharing to Town within 30 days of the end of such calendar quarter. CKIN shall maintain such accurate records as may be required to audit such Revenue Sharing calculations and Town shall be granted confidential access to such records. Any partial calendar quarters shall be pro-rated bases on the annual carload numbers from the above schedule. It is the intentions of the parties that the Revenue Sharing paid by CKIN to Town is to build funds to be deposited to the Capital Improvement Fund. . However, CKIN shall have no claim as to the disposition of such Revenue Sharing funds held by the Town. In the event of a material change in freight traffic patterns on the Rail Line, the parties agree to negotiate in good faith to equitably revise the Revenue Sharing formula.

16. Passenger Excursions

CKIN and Town agree that the establishment of passenger excursion activity on the Rail Line is a stated purpose and goal of the INDOT Agreement, and CKIN shall not impede or prevent the creation of additional, special, or regular passenger excursion activity on portions or all of the Rail Line.

- a. Rental or maintenance fees for passenger activities conducted by the operator are to be paid to the Capital Improvement Fund.

- b. Passenger activities on the Rail Line are subject to FRA and other regulatory agencies, and operations shall be subject to requirements of operator safety, equipment standards, and designation of track class above Excepted status.
- c. Additional track inspections required exclusively for regular passenger operations shall be the responsibility of the Museum or its designees, through a cost-reimbursement to CKIN, or by CKIN approving a qualified Museum individual to perform the function.
- d. CKIN may, at its option, negotiate independently with the Museum, to provide locomotives, cars, and qualified crewmembers to provide excursion passenger services on an interim basis as a contractor for Museum, subject to written approval by Town as per satisfaction of proof of insurance of such activity.
- e. CKIN shall maintain the right of inspection of Museum owned, leased, borrowed, or guest equipment, proof of operator qualifications, training, and other regulatory requirements, prior to permitting excursion operations over the Rail Line. Equipment may, at the request of CKIN, be subject to prior engineering review to ensure that operation may not damage or unduly deteriorate Rail Line beyond comparable freight wear-and-tear standards and impacts.
- f. CKIN shall not conduct passenger operations to the general public without written permission from Museum, and without proof of Passenger

Liability insurance to the Town, at limits and provisions acceptable at that time.

- g. Museum reserves the right to designate, at its option, non-Museum passenger operators to provide excursion services, provided that they meet all other applicable regulatory, safety, equipment and financial obligations under this agreement to the satisfaction of CKIN and subject to all other provisions of this Agreement.
- h. Museum shall provide CKIN with not less than 30-calendar day written notice of intent to operate passenger excursions on a special or regularly scheduled basis , including designated equipment, milepost limits of the operation, and a list of qualified crewmembers. CKIN shall not refuse passenger excursions operations without just cause for reasons of safety or direct un-reimbursed financial loss to CKIN of an unavoidable nature.

17. Financial Reporting.

During the term of this Agreement, the CKIN shall, within sixty (60) days after the end of its fiscal year provide the Town with unaudited (preliminary) financial statement, and within one hundred five (105) days after the end of its fiscal year provide the Town either with a confidential, audited financial report, or a Certified copy of the applicable final corporate tax report and supporting schedules as filed with the Internal Revenue Service, applicable only to CKIN rail operations. In addition, CKIN shall supply Town with not less than a summary, annual, confidential carloading information of operations of the rail property by customer,

commodity, per-carload revenues, and interchanging carrier. Summary carload information of carloads moved, commodity, and customer shall be provided not less than quarterly, due not less than thirty (30) days after the close of the calendar quarter.

18. Trackage Rights and Payments

Town reserves the right to allow the use of Rail Line for freight services by connecting rail entities other than CKIN, if such an entity

- a) Does not either originate or terminate any freight activity on the Rail Line to the competition of CKIN;
- b) agrees in writing to indemnify CKIN and hold it harmless against any and all liability arising in any way whatsoever from the other entity(s) use of the Rail Property, other than normal track wear and tear addressed below;
- c) is a bona-fide carrier legally and financially capable of providing such services;
- d) Agrees that at all times, the operations of the entity shall be conducted in a manner which does not unduly interfere with CKIN operations and shall be in compliance with all dispatching orders, operating rules, and schedules of CKIN;
- e) Agrees to pay a users fee or trackage rights charge to the CKIN of not less than thirty-three cents per car mile for any car or locomotive; loaded or empty, subject to annual escalation of the Rail Cost Recovery Index published by the

Association Railroads for the normal wear and tear on Rail Property Track and other purposes.

- f) Does not conflict with provisions of this agreement in relationship to Historic Corridor Preservation, or conflict with approval on additional freight services subject to Town or INDOT Agreement review of Museum Operations.
- g) Does not require the investment by CKIN for improvement of designated track class, inspection standards, frequency, or additional insurance limitations to allow such service without compensation for such cost.

19. Force Majure

In the event of Acts of God, war, insurrection, civil disorder or labor actions, each party shall be reasonably relieved of its obligations herein, provided that the affected party exercises reasonable efforts to, within its ability, mitigate the scope and duration of such force majeure. A party claiming force majeure under this Agreement must expeditiously notify the other party of the force majeure situation and any actions being taken toward mitigation.

20. Notices

Any notices required or permitted under this Agreement shall be delivered by the most expeditious means and followed in writing by First Class US Mail as follows:

Chesapeake and Indiana Railroad
916 Vine Street

Connersville, IN 47331

Phone (765) 825-0316

Fax: (765) 825-1237

Email: ibcx@webworks2000.net

Town of North Judson

Post Office Box 56

North Judson, IN 46366

Phone: (574) 896-3340

Fax: (574) 896-2153

21 Assignment

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. CKIN may not assign this Agreement without the written consent of Town, which shall not unreasonably withhold such consent.

22. No Waiver

No delay or omission to exercise any right or option accruing to either party upon any breach by the other party shall impair any such right or option or shall be construed to be waiver thereof, but any such right or option may be exercised from time to time as often as may be deemed necessary by the non-breaching party.

23. Severability

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of this agreement. All provisions of this Agreement shall be deemed severable.

24. No Abandonment.

The CKIN shall not apply for abandonment or discontinuance of service over any portion of the Rail Property without concurrence of the Town.

25. Termination.

Early termination of this Agreement shall be permitted in the event of an Act of God that renders the Rail Line in such condition that further operation is not feasible or an uncorrected material breach of the terms and conditions of this Agreement. In the event that one party believes the other party is in material breach of terms or conditions of this Agreement, the party claiming material breach shall provide not less than ten (10) days written notice of such material breach to the other party, which shall have ten consecutive days from such notice to remedy or correct such material breach. Only in the event such material breach is not remedied or corrected within the specified time may a party then elect to exercise early termination. Early termination shall not serve to eliminate or avoid any obligations incurred herein.

26. CKIN Default

Town may notify the CKIN in writing that the CKIN is in default of this agreement if the CKIN is not performing or complying with any condition of provision of this agreement including but not limited to the following:

- a) The CKIN fails to provide financial and carloading data under Article 18 "Financial Reporting".
- b) The CKIN makes unauthorized property removals or alterations under Article 5 "Historic Preservation "
- c) The CKIN fails to maintain track as provided for in Article 8 "Maintenance"
- d) The CKIN withholds or fails to pay required Revenue Sharing payments as provided for in Article 15 "Revenue Sharing"
- e) The CKIN fails to acquire the required insurance, as provided in Article 14 "Insurance and Liability ", or the required insurance is canceled.
- f) The CKIN is insolvent or files, or consents to the filing against it of a petition for relief or reorganization in bankruptcy or insolvency under the laws of any jurisdiction.

27. Town Default

CKIN may notify Town in writing that Town is in default of this agreement if the Town is not performing or complying with any provision of this agreement including, but not limited to, the following:

- a) Town discloses to any person or persons not directly associated with Town, all or any portion of Confidential Documents that CKIN provides Town under this Agreement, excepting any information contained in such Confidential Documents as may already be in the public domain. It is incumbent upon Town to require that any outside professionals or consultants employed by Town are bound by this same confidentiality requirement.

- b) Town fails to assume liability for incidents associated solely with its ownership of the real property and not involving railroad operations.
- c) In the event Town fails to agree to the removal or termination of (to the maximum extent practicable) trackage rights operation granted by Town to another carrier whereby that carrier is in material breach of its agreed obligations to CKIN such as, but not limited to, failure to pay trackage rights fees as required.
- d) Town, or its assign, is found to be insolvent as evidenced by the appointment of an overseeing official by the State of Indiana or the State Courts to conduct the business of the Town or its assign.

28. Remedies for Default

In the event of a material breach of this Agreement, in addition to the right of termination provided in Item 26 above, each party shall have whatever remedies are available against the other party either at law or in equity.

29. Arbitration

In the event of a dispute between the parties arising from interpretation or implementation of this Agreement, the parties agree to submit such dispute between claim values of \$3000 and \$250,000 to the American Arbitration Association for resolution. The parties agree to be then bound by the findings of such arbitration and to refrain from taking any legal action contrary to such

findings. In the event of arbitration under this provision, each party shall bear its own cost of representation with the cost of the arbitration born equally between the parties or in such a manner as the arbiter shall deem appropriate. Claims in excess of \$250,000 may be submitted to Binding Arbitration by prior agreement of both parties on a case-by-case basis.

30. General Provisions

- A. Authority. Each party represents and warrants to the other party that it is fully authorized to enter into and be bound by this Agreement.
- B. Time. Time is of the essence of this Agreement.
- C. Governing Law. This Agreement shall be construed and enforced under the law of the State of Indiana.

In witness whereof, the parties have below indicated their acceptance of this Agreement by their authorized signature:

For CKIN:

For Town:

By: R Powell Felt

By: Guy A. Gardin

Title: President

Title: Pres. N.T. Town Council

ATTACHMENT A

Routine Maintenance

1. Vegetation Control, spraying the Rail Line at least annually, clearing of vegetation obstructions at grade crossings, removal of downed trees encroaching on the track, bush-hogging of accessible areas in towns. Not included, debris removal dumped by third parties.
2. Signal Maintenance, electrical power to existing signals, replacing batteries (including proper disposal), replacing light bulbs, lenses, gates, periodic testing, repair of damage caused by third parties, replacement of insulated joints, bond wires and above ground wiring. Not included: replacement of unusable heads, mast, cantilevers, electronic boards, bungalows, cabinets, gate mechanisms, underground wiring, or signal upgrades.
3. Grade Crossings, patching of surface with hot or cold mix, repair of broken rails, repair of crossing timbers, redriving lags, repair or replacement of cross-bucks. Not included: rebuilding of surface, replacement of track structure
4. Inspection, all FRA required track and bridge inspections, copies available for Town upon request, to designated track class.
5. Switches, inspection, lubrication and adjustment of all switches, replacement of loose or missing bolts and cotter pins, replacement of banners as required, respiking to gage, welding of points and frogs. Not included: replacement of

switch components (other than those available from Rail Line inventory),
replacement of switch timbers.

6. Derailments, rerailling of all derailed cars and lading, repairs to track to return it to the same FRA class as prior to the derailment, spare material from the Rail Line may be used in the replacement if available, if not available CKIN must purchase material at its expense
7. Joints and Broken Rails, repair all missing or failed bolts (for existing FRA class), replace broken joint bars from available Rail Line inventory, repair broken rails and pull-aparts (Rail Line inventory may be used). Not included: purchase of new or used joint bars if not available from Rail Line inventory
8. Ties and Gage Rods, respike ties to maintain FRA class, insert gage rods to hold gage. Maintain FRA Class 1 or better tie conditions between Milepost CI 223 (LaCrosse) to Milepost CI 212.55 (N. Judson Museum Connection) either as a result of initial inspection at or better than FRA 1, or subsequent to any Capital Rehab program elevating track condition to at or better than FRA 1. Not included: ties in excess of up to 100 ties per year and gage rods in excess of up to 20 per year (quantities exclude derailment repair, if any) on any excepted track portion of the railroad.
9. Plates and Anchors, position loose plates and redrive loose anchors from Rail Line inventory. Not included: purchase of plates, anchors and program anchoring.
10. Surface, spot jacking and tamping to meet FRA class track, using existing ballast. Not included: program surfacing, additional ballast.

11. Interlocking plants, inspection and repair as specified in agreements, including welding and bolts. Not included, replacement of obsolete equipment, new crossing diamonds.
12. Bridges, inspection, cleaning of drift, erosion control as practical, repair and replacement of existing walkway boards and handrails, preventing ballast erosion as practical. Not included: replacement of piles, sills, caps, bents, stringers, deck board, side boards, headwalls or other components.
13. Rehabilitation Program Preparation, preparing and submitting an annual track and bridge rehabilitation program, coordination of program administration including contractor monitoring

Railroad Operating Agreement

Amendment One

This Amendment One to the Railroad Operating Agreement dated August 31, 2004 between the Incorporated Town of North Judson (Town) and the Chesapeake and Indiana Railroad, Incorporated (CKIN) witnesses that the Agreement is hereby amended as follows:

Term

The initial term of the Agreement is extended to July 31, 2012. All other provisions of Item 6 (Term) remain in full force and effect.

Capital Expenditures by CKIN

In consideration of the extension of the term, CKIN hereby transfers all capital expenditure items made by CKIN from the commencement date of the Agreement through December 31, 2007 to the Town of North Judson. CKIN shall have no remaining claim for capital expenditures made prior to December 31, 2007. All capital expenditures incurred by CKIN after December 31, 2007 shall be subject to the provisions of Item 10 (Capital Expenditures by CKIN).

In witness whereof, the parties have below indicated their acceptance of the Amendment One to the Agreement by their authorized signature:

For CKIN:

By: R. Powell Fulp

Title: President

For Town:

By: Shirley A. Gardin

Title: Pres. N.J. Town Bd.

Railroad Operating Agreement

Amendment Two

This Amendment Two to the Railroad Operating Agreement dated August 31, 2004 between the Incorporated Town of North Judson (Town) and the Chesapeake and Indiana Railroad, Incorporated (CKIN) witnesses that the Agreement is hereby amended as follows:

Term

The initial term of the Agreement is extended to December 31, 2015. Calculations under Item 10 (Revenue Sharing) of the Agreement for the period beginning August 1, 2015 through December 31, 2015 shall be performed on a prorated basis unless ~~the term~~ is subsequently extended beyond those dates. All other provisions of Item 6 (Term) remain in full force and effect.

IRSF Project 2010 Funding

CKIN hereby agrees to fund, solely with CKIN funds, up to Seventy Thousand Dollars (\$70,000.00) of the 2010 IRSF Track Project as part of the match money required by the IRSF Track Project. This IRSF additional funding shall exclude any Revenue Sharing amounts as well as any in-kind contributions of CKIN. The \$70,000.00 provided by CKIN under this Amendment Two shall be excluded from counting toward Capital Expenditures by CKIN per Item 10 of the Agreement.

Revenue Sharing

Effective with the calculation year beginning August 1, 2010, the Revenue Sharing schedule per Item 15 of the Agreement is hereby revised by a new Schedule A1 attached hereto and made a part of this Amendment Two.

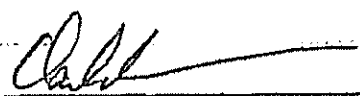
In witness whereof, the parties have below indicated their acceptance of the Amendment One to the Agreement by their authorized signature:

For CKIN:

By: 

Title: President

For Town:

By: 

Title: Town Council President.

Amendment Two

Schedule A1

Annual Carloads

Revenue Sharing per Carload

1 to 500	none
501 to 800	\$ 10
801 to 1000	\$ 20
1001 to 1400	\$ 30
1401 and above	\$ 35

Initials CKIN: RPF

Initials Town: DA

SUPPLEMENT TO DECEMBER 9, 2015 MEDIATION AGREEMENT

The Town of North Judson ("The Town"), The Chesapeake and Indiana Railroad, Inc. ("CKIN"), and Co-Alliance (herein after collectively ("the Parties")) entered into a Mediation Agreement dated December 9, 2015, a copy of which is attached hereto. The Mediation Agreement in part extended the term of the August 31, 2004 Railroad Operating Agreement between The Town and CKIN to May 15, 2016, except that there would be no passenger service over any segment of the North Judson Line during the extended period.

Due to changes in circumstances since the execution of the Mediation Agreement on December 9, 2015, the Parties hereby agree to the following extension of the Mediation Agreement and further extension of the Railroad Operating Agreement, as further amended herein below:

1) The Mediation Agreement and term of the Railroad Operating Agreement are hereby extended up to and including August 15, 2016 ("the Extension).

2) The Town agreed to accept the Mediation Agreement at the meeting of The Town Board on December 21, 2015.

3) The Town has drafted and voted to accept a Request for Proposal ("RFP") which would authorize The Town to lease the rail line. In order to assist The Town with the RFP process, The Town has retained the services of an Appraiser and has hired Mr. David Gogol to assist The Town with the RFP process.

4) The Town intends for the RFP process to be completed within 60 to 90 days from RFP issuance, and CKIN agrees to cooperate with the Town during the RFP process. The Town's expectation is to select a lessee and finalize a lease agreement within 30 days after the completion of the RFP process, but no later than August 15, 2016.

5) CKIN filed a letter with the Federal Railroad Administration ("FRA") on or about May 3, 2016 advising that CKIN is no longer responsible for the North Judson to English Lake segment of the rail line under 49 C.F.R. Part 213. The Town and CKIN recognize and agree that The Town shall be responsible for the inspection and maintenance of that segment of the rail line under 49 C.F.R. Part 213 after May 3, 2016. If The Town permits the Hoosier Valley Rail Museum ("HVRM") to operate passenger service over that segment of the line after May 3, 2016, The Town will be solely responsible for any violations of FRA rules.

6) The Town and CKIN agree that the Railroad Operating Agreement is amended by this Supplement to the Mediation Agreement to reflect the changes in responsibilities set forth in subparagraph (5).

7) During the extension period (May 15 to August 15), the Town agrees that it will not permit the HVRM to operate any passenger service outside the North Judson to English Lake segment except with the written consent of both The Town and CKIN at their sole discretion. The Town further agrees that it will require that any requests for operation of such passenger service by HVRM during the extension period must be submitted to The Town and

8) In the event that a Lease Agreement is finalized between the Town and a Lessee, CKIN and the Town will voluntarily terminate the Railroad Operating Agreement. All parties will act in good faith.

9) The RFP process contemplated by the Mediation Agreement shall be completed as expeditiously as possible so that a new lease of the rail line and associated agreements shall take place on or before August 15, 2016.

10) To the extent that the Mediation Agreement, the Railroad Operating Agreement, any Agreements between The Town and INDOT, and any Agreements between The Town and HVRM conflict with the provisions of the ICC Termination Act ("ICCTA"), the ICCTA will preempt those Agreements and State or local law.

11) The Parties agree that the Indiana Courts will have jurisdiction to enforce this Mediation Agreement, and that any interpretation of this Agreement shall be in accordance with Indiana law.

12) This Supplement to the Mediation Agreement shall become effective upon approval of The Town's Council and execution by CKIN and Co-Alliance.

The Incorporated Town of North Judson, IN

By:

Wendy Hoppe, President
Town Council

Date

Attorney: Rachel Arndt

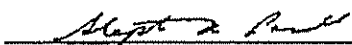
Date

The Chesapeake and Indiana Railroad, Inc.

By:


Powell Felix, President

5-6-16
Date


Attorney: Stephen R. Pennell

5-6-16
Date

Co-Alliance

By:

Attorney: Elizabeth South

Date

CKIN in writing at least 30 days in advance of the proposed trip. Only two requests will be entertained.

8) In the event that a Lease Agreement is finalized between the Town and a Lessee, CKIN and the Town will voluntarily terminate the Railroad Operating Agreement. All parties will act in good faith.

9) To the extent that the Mediation Agreement, the Railroad Operating Agreement, any Agreements between The Town and INDOT, and any Agreements between The Town and HVRM conflict with the provisions of the ICC Termination Act ("ICCTA"), the ICCTA will preempt those Agreements and State or local law.

10) The Parties agree that the Indiana Courts will have jurisdiction to enforce this Mediation Agreement, and that any interpretation of this Agreement shall be in accordance with Indiana law.

11) This Supplement to the Mediation Agreement shall become effective upon approval of The Town's Council and execution by CKIN and Co-Alliance.

The Incorporated Town of North Judson, IN

By:

Wendy Hoppe, President
Town Council

Date

Attorney: Rachel Arndt

Date

The Chesapeake and Indiana Railroad, Inc.

By:

Powell Felix, President

Date

Attorney: Stephen R. Pennell

Date

Co-Alliance

By:


Attorney: Elizabeth South

Date

5/11/2016

CKIN in writing at least 30 days in advance of the proposed trip. Only two requests will be entertained.

8) In the event that a Lease Agreement is finalized between the Town and a Lessee, CKIN and the Town will voluntarily terminate the Railroad Operating Agreement. All parties will act in good faith.

9) To the extent that the Mediation Agreement, the Railroad Operating Agreement, any Agreements between The Town and INDOT, and any Agreements between The Town and HVRM conflict with the provisions of the ICC Termination Act ("ICCTA"), the ICCTA will preempt those Agreements and State or local law.

10) The Parties agree that the Indiana Courts will have jurisdiction to enforce this Mediation Agreement, and that any interpretation of this Agreement shall be in accordance with Indiana law.

11) This Supplement to the Mediation Agreement shall become effective upon approval of The Town's Council and execution by CKIN and Co-Alliance.

The Incorporated Town of North Judson, IN

By:

Wendy Hoppe, President
Town Council

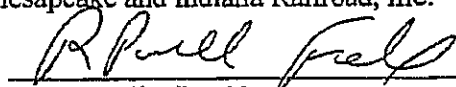
Date

Attorney: Rachel Arndt

Date

The Chesapeake and Indiana Railroad, Inc.

By:


Powell Felix, President

5-12-16
Date

Attorney: Stephen R. Pennell

Date

Co-Alliance

By:

Attorney: Elizabeth South

Date

CKIN in writing at least 30 days in advance of the proposed trip. Only two requests will be entertained.

8) In the event that a Lease Agreement is finalized between the Town and a Lessee, CKIN and the Town will voluntarily terminate the Railroad Operating Agreement. All parties will act in good faith.

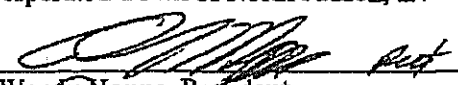
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The Incorporated Town of North Judson, IN

By:


Wendy Noppe, President
Town Council

Date

May 12, 2016

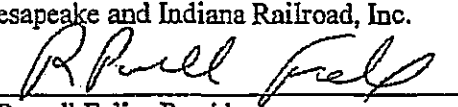

Attorney: Rachel Arndt

Date

May 13, 2016

The Chesapeake and Indiana Railroad, Inc.

By:


Powell Felix, President

Date

5-12-16

Attorney: Stephen R. Pennell

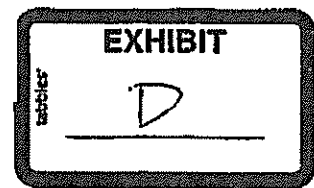
Date

Co-Alliance

By:

Attorney: Elizabeth South

Date



Stephen R. Pennell
765.428.7034
srp@stuartlaw.com

September 6, 2016

Via Certified Mail, Return Receipt Requested

Town of North Judson
ATTN: Town Council
310 Lane Street
North Judson, IN 46366

Indiana Political Subdivision
Risk Management Commission
Indiana Department of Insurance
311 W. Washington St, Suite 300
Indianapolis, IN 46204

Re: Notice of Tort Claims

To Whom it May Concern:

Stuart & Branigin, LLP represents The Chesapeake and Indiana Railroad, Inc. (CKIN). Under INDIANA CODE § 34-13-3-1 *et seq.*, CKIN notifies the Town of North Judson (the "Town") and the Indiana Political Subdivision Risk Management Commission of its own potential tort claims against the Town as follows:

1. *Unlawful Disclosure of Confidential Information.* On June 15, 2016, the Town published a Request for Proposals (the "RFP") to solicit proposals from persons seeking to take over operating responsibilities for a certain rail line owned by the Town. CKIN previously furnished to the Town certain confidential information concerning rail line data (the "Confidential Information"). Under the ICC Termination Act ("the ICCTA") the Town became a railroad common carrier subject to the jurisdiction of the federal Surface Transportation Board when it acquired that rail line in 2004. The ICCTA prohibits railroad common carriers such as the Town from disclosing the Confidential Information under 49 U.S.C. § 11904 and § 11906 absent customer consent which it never sought or received. The Town nevertheless published the Confidential Information in the RFP.
2. *Violation of Statutory RFP Procedures.* Indiana law governs the process by which a political unit may sell or lease real property under IND. CODE § 36-1-11-1 *et seq.* (the "Statutory RFP Procedures") The Town's RFP and amended RFP published June 17 (the "Amended RFP") failed to comply with the Statutory RFP Procedures. The Town also failed to comply with the Statutory RFP Procedures in evaluating and selecting proposals which were submitted in response to the Amended RFP. Further, by disclosing the Confidential Information to competitors of CKIN, the Town compromised the RFP process.

Extent of loss and amount of damages sought: CKIN suffered damages from the disclosure of Confidential Information and from the Town's failure to follow the Statutory RFP

Stuart & Branigin LLP
300 Main St. | Suite 900 | P.O. Box 1010 | Lafayette, Indiana 47902-1010
765.423.1561 | stuartlaw.com

Procedures. CKIN's damages as a result of the Town's violation of the Statutory RFP Procedures and the Town's disclosure of Confidential Information include compensatory, incidental, and consequential damages including damages for lost profits. CKIN is seeking damages in excess of One Million Dollars (\$1,000,000.00).

Time and place of loss: The disclosure of Confidential Information occurred on June 15, 2016. The Town announced the selection of Lake States Railway on or around July 21, 2016.

Names of persons involved: On information and belief, the Town acted at the direction of its governing body, the North Judson Town Council.

Residence of claimant: CKIN's address at the time of the loss was, and currently is, 916 Vine St., Connersville, IN 47331. This is CKIN's current address. CKIN may be contacted through the Law Offices of Stuart & Branigin, LLP (765) 423-1561.

Please contact me directly with any questions regarding this matter.

Very truly yours,



Stephen R. Pennell

CC: Rachael A. Arndt
125 East 10th Street
Rochester, IN 46975

841808_1



Stephen R. Pennell
765.428.7034
srp@stuartlaw.com

October 31, 2016

Via Hand Delivery

LaPorte Circuit Clerk
LaPorte Circuit Courthouse
813 Lincolnway, Ste. 105
LaPorte, IN 46350

**RE: The Chesapeake and Indiana Railroad Company, Inc. v. Incorporated Town
of North Judson
LaPorte Circuit Court**

Dear Clerk:

In regard to the above-captioned matter, please find enclosed an original and two copies of our Complaint with attachments; Appearance for Attorney in Civil Case, Stephen R. Pennell; Appearance for Attorney in Civil Case, David M. Stupich; four copies of the Summons; and a check in the amount of \$156.00 regarding the above-referenced case.

Please return a file marked copy to our office in the self-addressed stamped envelope provided for your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen R. Pennell".

Stephen R. Pennell

SRP/slb

Enclosure(s)

864842