

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB DOCKET NO. FD 35984

EXPEDITED HANDLING REQUESTED

OHIO RIVER PARTNERS, LLC – EXEMPTION FOR ACQUISITION AND
OPERATION OF A RAIL LINE – HANNIBAL DEVELOPMENT, LLC 244269
IN MONROE COUNTY, OHIO

PETITION FOR DEFERMENT OF RAIL OPERATIONS

ENTERED
Office of Proceedings
September 5, 2017
Part of
Public Record

Richard R. Wilson, Esq.
RICHARD R. WILSON, P.C.
518 N. Center Street, Ste. 1
Ebensburg, PA 15931
(814) 419-8152
Counsel for Ohio Terminal Railway Company

FEE RECEIVED
September 5, 2017
SURFACE
TRANSPORTATION BOARD

FILED
September 5, 2017
SURFACE
TRANSPORTATION BOARD

Date: September 1, 2017

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PETITION FOR DEFERMENT OF RAIL OPERATIONS

On March 30, 2016 in STB Docket No. FD 35984, Ohio River Partners, LLC – Acquisition and Operating Exemption – Hannibal Development, LLC, the STB granted Ohio River Partners, LLC (“ORP”) permissive authority to acquire and operate rail service on the Omal Line in Monroe County, Ohio which is subject to a rail easement by means of which Ohio Terminal Railroad (“OTR”) provided common carrier rail service on the Omal Line under authority granted to OTR in Finance Docket No. 35703 Ohio Terminal Railway – Operation Exemption – Hannibal Real Estate (STB served January 11, 2013).

In its March 30, 2016 Decision, the Board noted that a dispute existed among the parties regarding the extent of the rail easement rights granted to HRE and utilized by OTR under Ohio law and that those issues would have to be resolved in state court. Unfortunately, the parties have not been able to resolve those issues by negotiations and accordingly, OTR has found it necessary to institute a declaratory judgment proceeding in Monroe County, Ohio which was filed on August 29, 2017 (See Exhibit A)

In its March 30, 2016 decision, the STB also required that ORP and OTR negotiate and submit to the STB a joint operating agreement between ORP and OTR and a



joint interchange agreement between ORP, OTR and Norfolk Southern. Initial discussions concerning these agreements occurred between OTR and ORP on August 9, 2017 at which time ORP advised OTR that it intended to commence ORP rail operations on the Omal Line on September 15, 2017. The parties exchanged information regarding current and anticipated rail operations and traffic volumes. These discussions revealed that joint operations on the line present a complex set of operational and safety issues that could seriously impact the ability of both parties to provide safe and efficient rail service on the Omal Line.

During the meeting, the parties agreed regarding the operating difficulties which both carriers would experience on the Line. The parties had learned that NSR would not be able to block traffic by carrier which would require that OTR and ORP's traffic be separated on the Omal Line where there are inadequate switching facilities available to separate each carrier's traffic. ORP, as yet, was unable to project future traffic volumes. The parties considered haulage, trackage rights or some form of alternating use, but have been unable to analyze the operational impact of those alternative arrangements. Further complicating these arrangements is the fact that the parties' traffic involves competitive commodities. Finally, ORP has advised OTR that it intends to reposition several locomotives to the former Hannibal Development site. The parties, however, plan to continue their efforts to negotiate joint operational and interchange arrangements required by the Board's order but it does not appear that these joint arrangements can be concluded by September 15, 2017.

Accordingly, OTR respectfully requests that the Board continue to defer ORP's operating authority until such time as the state property ownership interests have been finally resolved under Ohio law and the parties have been able to negotiate the joint

operational and interchange arrangements required by the Board given the physical limitations and operational constraints of the Omal Line.

Respectfully submitted,

A handwritten signature in cursive script, reading "Richard R. Wilson", is written over a horizontal line.

Richard R. Wilson, Esq.
RICHARD R. WILSON, P.C.
518 N. Center Street, Ste. 1
Ebensburg, PA 15931
(814) 419-8152
Counsel for Ohio Terminal Railway Company

VERIFICATION

I, James Streett, President of Ohio Terminal Railway Company,
swear or affirm and verify that the statements made in the foregoing Petition are
true and accurate to the best of my knowledge, information and belief.

9-1-17
Date

James Streett
James Streett

CERTIFICATE OF SERVICE

I hereby state that on this 1st day of September, 2017, I caused a copy of the foregoing Petition for Deferment of Rail Operations to be served by first-class U.S. Mail on the following persons:

Terrance M. Hynes
Sidley Austin, LLC
1501 K Street, NW
Washington, DC 20005

Philip R. Hoffman, Esq.
Prior Cashman, LLP
7 Times Square
New York, NY 10036-6569

William A. Mullins, Esq.
Baker & Miller, PLLC
2401 Pennsylvania Avenue, NW
Ste. 300
Washington, DC 20037


Richard R. Wilson, Esq.

Monroe County Common Pleas Court

Journal Entries: CVH2017-247

Plaintiff:

Ohio Terminal Railway Company

Defendants:

Hannibal Development,Llc; Ohio River Partners Llc; Hannibal Real Estate Llc

08/30/2017

- CERTIFIED MAIL ISSUED TO HANNIBAL DEVELOPMENT,LLC
CERTIFIED MAIL # 6900 9997 9016 1674 9697
- CERTIFIED MAIL ISSUED TO HANNIBAL REAL ESTATE LLC
CERTIFIED MAIL # 6900 9997 9016 1674 9802
- CERTIFIED MAIL ISSUED TO OHIO RIVER PARTNERS LLC
CERTIFIED MAIL # 6900 9997 9016 1674 9741
- DEPOSIT APPLIED \$ 127.00
- DEPOSIT-RECEIPT NO. 23071 IN THE AMOUNT OF \$ 150.00
GALLAGHER SHARP
- CIVIL FILING FEE \$127.00
- CLERKS FEE \$
- CLERKS FEE \$CERTIFIED MAIL
- COPY OF SUMMONS AND CERTIFIED COPY OF COMPLAINT SENT TO ALL
DEFENDANTS AT GIVEN ADDRESSES BY CERTIFIED MAIL RETURN
RECEIPT

08/29/2017

- FILED: OTHER CIVIL
- COMPLAINT FOR DECLARATORY JUDGMENT FILED.
- PRAECIPE FILED.

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**IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO**

**OHIO TERMINAL RAILWAY
COMPANY**
519 Cedar Way, Building 1, Suite 100
Oakmont, Pennsylvania 15139,

Plaintiff,

-vs-

HANNIBAL DEVELOPMENT, LLC,
dba HANNIBAL DEVELOPMENT
PARTNERS, LLC
c/o CSC-Lawyers Incorporating Service,
Statutory Agent
50 West Broad Street, Suite 1330
Columbus, Ohio 43215,

and

OHIO RIVER PARTNERS, LLC
Mark H. Rose, Statutory Agent
Four Seagate, Eighth Floor
Toledo, Ohio 43604,

and

HANNIBAL REAL ESTATE, LLC
c/o David M. Linick, Statutory Agent
26703 Hurlingham Road
Beachwood, Ohio 44122,

Defendants.

) **CASE NO.:**

) **JUDGE:**

) **COMPLAINT FOR DECLARATORY**
) **JUDGMENT**

) **(Jury Demand Endorsed Hereon)**

NOW COMES Plaintiff, Ohio Terminal Railway Company, by and through undersigned
counsel, and for its Complaint hereby states and alleges as follows:

PARTIES

1. Plaintiff, Ohio Terminal Railway Company (“OTRC” or “Plaintiff”), a common carrier by railroad, is an Ohio corporation with its principal place of business and corporate offices located at 519 Cedar Way, Building 1, Suite 100, Oakmont, Pennsylvania 15139. OTRC is a common carrier by railroad pursuant to federal and state statutes.

2. Defendant, Hannibal Development, LLC, dba Hannibal Development Partners, LLC (“HDP”), is a limited liability company organized pursuant to the laws of the state of Delaware, whose statutory agent is CSC-Lawyers Incorporating Service, 50 West Broad Street, Suite 1330, Columbus, Ohio 43125.

3. Defendant, Ohio River Partners, LLC (“ORP”), is a limited liability organized pursuant to the laws of the state of Ohio, whose statutory agent is Mark H. Rose, Four Seagate, Eighth Floor Toledo, Ohio 43604.

4. Defendant, Hannibal Real Estate, LLC (“HRE”), is a limited liability company organized pursuant to the laws of the state of Delaware, whose statutory agent is David M Linick, 26703 Hurlingham Road, Beachwood, Ohio 44122.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction in this matter because it involves agreements regulated by Ohio law and/or Plaintiff’s damages are in excess of the jurisdictional minimum.

6. The Court has personal jurisdiction over the Defendants because each of them has sufficient minimum contacts with the State of Ohio.

7. Venue is proper for the reasons set forth in Paragraphs 5 and 6 and for the reason that the land and property at issue is situated and located in Monroe County, Ohio.

8. Plaintiff brings this action before the Court seeking a declaratory judgment pursuant to Rule 57 of the Ohio Rules of Civil Procedure and pursuant to Chapter 2721 of the Ohio Revised Code, specifically § 2721.03. This action presents an actual controversy of sufficient immediacy and magnitude to justify the issuance of declaratory relief by the Court.

FACTS

9. HRE owns real property located in an industrial park in Hannibal, Ohio (the “**HRE Property**”).

10. On or about July 5, 2007, HRE entered into a contract with Ormet Railroad Corporation (“**Ormet**”) whereby HRE obtained an exclusive and perpetual easement (the “**Easement**”) allowing HRE to use an Ormet-owned rail line approximately 12.2 miles in length, known as the Omal Secondary Track (milepost 60.5 at or near Powhatan Point to milepost 72.7 at or near Hannibal, Ohio), located near the HRE Property (the “**Rail Line**”). A true and accurate copy of the Easement is attached hereto as Exhibit 1. The Easement was recorded with the Monroe County Recorder’s Office on or about July 10, 2007.

11. At all relevant times, HRE has repeatedly represented to OTRC that the Easement is a perpetual exclusive easement to provide rail service on the entire Rail Line. OTRC has reasonably relied on HRE’s representations as to the exclusivity of the Easement allowing access to the entire Rail Line.

12. On or about December 12, 2012, HRE entered into an operating agreement with OTRC (the “**Operating Agreement**”) wherein OTRC would exclusively provide rail service to the HRE Property and adjacent business owners on the Rail Line via the Easement. A true and accurate copy of the Operating Agreement (with financial information redacted) is attached hereto as Exhibit 2.

13. Pursuant to the terms of the Operating Agreement, OTRC was granted exclusive use of the Rail Line to provide rail service on the Rail Line.

14. Pursuant to the Operating Agreement, OTRC agreed to provide rail management and operating services related to the HRE Property. OTRC also agreed to, among other things, pay operating fees to HRE related to OTRC's exclusive use of the Easement and its service to the entire Rail Line.

15. On January 11, 2013, the federal Surface Transportation Board ("STB") granted OTRC the right to provide common carrier service to all locations on the Rail Line ("**January 11, 2013 Order**"). A true and accurate copy of the January 11, 2013 Order (STB Finance Docket No. 35703) is attached hereto as Exhibit 3.

16. OTRC has been providing common carrier service on the Rail Line since negotiating the Operating Agreement with HRE and the STB order granting OTRC the authority to provide common carrier service on the Rail Line. OTRC has made substantial capital improvements and has expended significant resources to provide common carrier service on the Rail Line based on the terms of the Operating Agreement, the STB's order, and the representations of HRE as specified above.

17. HDP acquired the Rail Line and other property of Ormet in a bankruptcy proceeding in 2014.

18. Since 2014, HDP and OTRC have had ongoing disputes related to OTRC's exclusive use of the Rail Line and the exclusivity of the Easement. Specifically, HDP has claimed OTRC illegally parks, stages, stores, assembles, groups, and/or handles rail cars located on the Rail Line.

19. OTRC has always disputed HDP's claims because, among other things, OTRC believes it is entitled to exclusive use of the Rail Line per the Easement, Operating Agreement, HRE's representations, and the STB's grant of authority to provide common carrier rail services to the public using the Rail Line and the Easement.

20. OTRC and HDP have engaged in ongoing discussions regarding the Easement and the disputes related to the Rail Line. However, the parties have been unable to resolve their disputes.

21. On or about December 18, 2015, ORP filed a verified notice of exemption under 49 CFR § 1150.31 with STB to acquire the Rail Line from HDP and operate rail service on the Rail Line (the "**Notice of Exemption**").

22. On or about January 7, 2016, OTRC filed a petition to reject the Notice of Exemption based on, among other things, false and misleading statements contained in the Notice of Exemption and ongoing disputes between HDP, HRE, and OTRC regarding the scope of the Easement.

23. On April 1, 2016, the STB issued an order granting ORP's request for an exemption (the "**April 1, 2016 Order**"). A true and accurate copy of the April 1, 2016 Order (STB Finance Docket No. 35984) is attached hereto as Exhibit 4.

24. In the April 1, 2016 Order, the STB held that its grant of authority was "permissive only, and in order to exercise that authority and commence operations [on the Rail Line], the carrier [ORP] must still obtain the necessary rights under state property and/or contract law."

25. In the April 1, 2016 Order, the STB further held the "[b]efore ORP may commence any operations on the [Rail Line], NSR [Norfolk Southern Railway Company], ORP,

and ORTC must negotiate and agree on interchange and operating protocols, and jointly certify to the Board that these protocols are in place.”

26. On February 21, 2017, OTRC and HRE entered into a **Third Party Utilization Agreement**, thereby amending the operating fees provision of the Operating Agreement and memorializing and confirming OTRC’s right to use the entire Rail Line to serve not only HRE Property, but third parties located along the Rail Line. A true and accurate copy of the Third Party Utilization Agreement (with financial information redacted) is attached hereto as Exhibit 5.

27. Upon information and belief, ORP purchased the Rail Line and certain surrounding property from HDP in early to mid 2017.

28. On or about August 9, 2017, and August 11, 2017, a representative from ORP met with OTRC executives and informed OTRC that ORP intends to initiate rail service on the Rail Line no later than September 15, 2017 (the “**Rail Service Notice**”).

29. Upon information and belief, ORP intends to follow through on its Rail Service Notice in direct contravention of the STB April 1, 2016 Order requiring ORP to obtain the necessary rights under state property and/or contract law to operate on the Rail Line. Specifically, ORP has failed to resolve the issues set forth above related to whether OTRC has exclusive or non-exclusive rights to operate and provide common carrier service on the entire Rail Line pursuant to the Easement, the Third Party Utilization Agreement, the Operating Agreement, and the STB’s grant of authority in its January 11, 2013 Order. ORP has also failed yet to negotiate and agree on interchange and operating protocols with OTRC and NSR, and to submit a joint certification to the STB that such protocols are in place.

COUNT I

(Declaratory Judgment)

30. Plaintiff reasserts and re-alleges each and every allegation, whether above or below, as if fully rewritten herein.

31. OTRC, HDP, ORP, and HRE have a legitimate dispute regarding the scope of and rights related to both the Easement and the exclusive or non-exclusive use of the entire Rail Line. Thus, an actual controversy exists between and among the parties requiring the issuance of a declaratory order.

32. OTRC believes that the Easement is perpetual and exclusive according to its terms and as HRE has represented to OTRC at all relevant times. OTRC further believes that the Operating Agreement provides OTRC with the exclusive right to provide rail service on the entire Rail Line for HRE's benefit as well as the benefit of other companies and industries located on the Rail Line. Thus, OTRC is entitled to exclusive use of the entire Rail Line pursuant to the Easement, the Operating Agreement, and its status as a common carrier as set forth by the STB.

33. ORP believes it is entitled to use the Rail Line, and that OTRC's use of the entire Rail Line is not exclusive.

34. In accordance with the STB directive to resolve the property rights issue before ORP may commence operations on the Rail Line, OTRC now seeks a declaration from this Court finding that OTRC has the exclusive right to provide common carrier service on the entire Rail Line and to all locations on the Rail Line pursuant to the Easement, the Operating Agreement, the Third Party Utilization Agreement, and the January 11, 2013 Order allowing OTRC to provide common carrier service to the entire Rail Line.

WHEREFORE, Plaintiff, Ohio Terminal Railway Company prays that the Court issue an Order declaring:

- 1) The Easement is a perpetual and exclusive easement granted by Ormet to HRE to use the entire Rail Line for railway service; **and/or**
- 2) The Easement, Operating Agreement, the January 11, 2013 Order and/or the Third Party Utilization Agreement provide OTRC the right to use the Rail Line to provide common carrier rail service to HRE as well as other industries and businesses on the entire Rail Line; **and/or**
- 3) The Easement, Operating Agreement, Third Party Utilization Agreement, and/or the January 11, 2013 Order provide for OTRC's exclusive use of the entire Rail Line for common carrier rail service on the entire Rail Line; **and**
- 4) Any other further relief that this Court deems just and equitable.

Respectfully Submitted,



THOMAS E. DOVER (0016765)
JOSEPH J. SANTORO (0068294)
SCOTT A. NORCROSS (0073407)
R. SCOTT HEASLEY (0087235)
GALLAGHER SHARP

1501 Euclid Avenue
6th Floor, Bulkley Building
Cleveland, OH 44115
Telephone: (216) 241-5310
Facsimile: (216) 241-1608

E-mail: tdover@gallaghersharp.com
jsantoro@gallaghersharp.com
snorcross@gallaghersharp.com
sheasley@gallaghersharp.com

Attorneys for Plaintiff

JURY DEMAND

Plaintiff Ohio Terminal Railway Company, LLC, requests that a Jury be impaneled for all triable issues in this case.

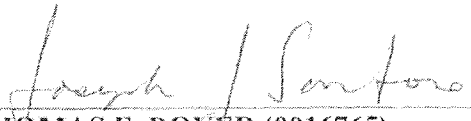

THOMAS E. DOVER (0016765)
JOSEPH J. SANTORO (0068294)
SCOTT A. NORCROSS (0073407)
R. SCOTT HEASLEY (0087235)

EXHIBIT 1

EASEMENT FOR USE OF RAILWAY

This Easement for Use of Railway ("Agreement") is effective this 5th day of July, 2007 by and between **ORMET RAILROAD CORPORATION**, a Delaware corporation (hereinafter "Grantor") and **HANNIBAL REAL ESTATE, LLC**, a Delaware limited liability company (hereinafter "Grantee");

WHEREAS, Grantor is the owner of certain real property in Monroe County, Ohio described on Exhibit "A" attached hereto and incorporated herein by reference ("Grantor's Property"); and

WHEREAS, Grantee is the owner of certain real property in Monroe County, Ohio described on Exhibit "B" attached hereto and incorporated herein by reference ("Grantee's Property"); and

WHEREAS, Grantor is the owner of a railway line that abuts Grantee's property and contains switching apparatus which controls a railroad spur line into Grantee's property (the "Railway Line"); and

WHEREAS, Grantee may require use of the Railway Line in Grantee's business; and

WHEREAS, Grantor has agreed to allow Grantee to use the Railway Line subject to the terms and conditions of this Agreement;

NOW THEREFORE, the parties agree as follows:

- 1) **Use.** Grantee shall have the right at Grantee's expense to use the Railway Line for the purpose of providing rail service to Grantee's property.
- 2) **Maintenance.** In the event Grantee elects to use the Railway Line pursuant to this Agreement, Grantee shall be solely responsible to determine the suitability of the Railway Line for use and to bear any and all costs for maintenance, repair, or replacement of the Railway Line to make the Railway Line useable for Grantee's purposes.
- 3) **Representations of Grantor.** Grantor makes no representations or warranties regarding the condition, serviceability, or safety of the Railway Line. In the event Grantee elects to use the Railway Line pursuant to this Agreement, Grantee does so at Grantee's sole risk.
- 4) **Notice.** Grantee agrees to provide Grantor with at least thirty (30) days notice of Grantee's intention to use the Railway Line prior to Grantee's first use of the Railway Line. Thereafter, Grantee shall provide Grantor with such notice of the use of the Railway Line as Grantor and Grantee mutually agree is necessary for Grantee to safely use the Railway Line.
- 5) **Duration.** The rights granted hereunder shall continue in full force and effect in perpetuity unless earlier terminated by written agreement of the parties or their respective successors or assign.
- 6) **Insurance.** Prior to the use of the Easement Premises by Grantee, its agents, employees, licensees or invitees, Grantee agrees to obtain, and shall thereafter during the period of its use of the Easement Premises, continually maintain, at its sole cost and expense, Broad Form Commercial General Liability Insurance, including, without limitation, personal injury and broad form property damage coverage against claims for personal injury and property damage on or about the Easement Premises attributable solely to the use of the Easement Premises subject to a combined single limit of not less than \$2,000,000 of personal injury or property damage as the result of any one occurrence. All such policy or policies of insurance shall name Grantor as an additional insured.

7) **Indemnity.**

- (a) **By Grantor.** Grantor shall indemnify, defend (by counsel reasonably acceptable to Grantee), protect, and hold Grantee, Grantee's partners, members, managers, employees, authorized agents, contractors, visitors and invitees (collectively, "Grantee's Indemnified Parties"), harmless from and against all claims, liabilities, penalties, losses, damages, costs and expenses, claims or judgments (including, without limitation, attorneys' fees) in connection with or arising out of any injury to persons or damage to property occurring as a result of the use of the Railway Line which is directly related to and proximately caused by Grantor or Grantor's Indemnified Parties, or arising from Grantor's use, maintenance, occupation or operation of the railway; provided, however that Grantor shall not indemnify Grantee for any injury or damage to the extent arising as the result of the negligence or willful misconduct of Grantee or Grantee's Indemnified Parties. Grantee need not have first paid any such claim in order to be defended or indemnified. Paragraph 7 shall survive the expiration and termination of this Agreement.
- (b) **By Grantee.** Grantee shall indemnify, defend (by counsel reasonably acceptable to Grantor), protect, and hold Grantor, Grantor's partners, members, managers, employees, authorized agents, contractors, visitors and invitees (collectively, "Grantor's Indemnified Parties"), harmless from and against all claims, liabilities, penalties, losses, damages, costs and expenses, claims or judgments (including, without limitation, attorneys' fees) in connection with or arising out of any injury to persons or damage to property occurring as a result of the Railway Line which is directly related to and proximately caused by Grantee or Grantee's Indemnified Parties, or arising from Grantee's use, maintenance, occupation or operation of the railway; provided, however that Grantee shall not indemnify Grantor for any injury or damage to the extent arising as the result of the negligence or willful misconduct of Grantor or Grantor's Indemnified Parties. Grantor need not have first paid any such claim in order to be defended or indemnified.

8. **Third Party Beneficiaries.** Nothing contained within the grant of this easement shall be construed as creating any rights in or for the benefit of the general public.

9. **Notices.** All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given if hand delivered, sent by a nationally-recognized overnight delivery service or sent by registered or certified mail, postage prepaid, (a) with respect to Grantor, addressed to:

(a) with respect to Grantor:

Ormet Railroad Corporation
ATTN: Chief Financial Officer
43840 State Route 7
Hannibal, OH 43931

(b) with respect to Grantee:

Hannibal Real Estate, LLC
ATTN: Jeffrey A. Himmel
711 Westchester Avenue
White Plains, NY 10604

Grantor and Grantee shall each have the right from time to time to specify as its address for purposes of this Agreement any other address in the United States of America upon giving of fifteen (15) days written notice thereof, similarly given, to the other party.

10. **Relationship of Parties.** Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties

hereto, it being understood and agreed that no provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of easement grantor and easement grantee.

11. **Dispute Resolution.** In the event a dispute arises under the terms and conditions of this Agreement, such dispute shall be resolved by mandatory and binding arbitration. Arbitration shall occur pursuant to the rules and regulations of the American Arbitration Association. However, such arbitration may be held without the intervention of the American Arbitration Association if the parties so agree. Arbitration shall be conducted at a mutually agreeable location, however, if such mutually agreeable location cannot be agreed to by and between the parties, then such arbitration shall be held in Hannibal, Ohio. The arbitration shall be conducted by a single arbitrator, agreed to by the parties, and in the event the parties cannot agree on a single arbitrator, each party shall appoint one (1) arbitrator and the two (2) arbitrators shall appoint a third arbitrator and the three (3) arbitrators shall jointly hear the matter and determine its resolution by majority rule. In the event the parties cannot agree upon the arbitration terms within thirty (30) days of either party receiving written notice of a demand for arbitration, then the party demanding such arbitration shall submit the matter to the American Arbitration Association and the arbitration shall be conducted through such governed body. The decision reached in arbitration may be filed in any court of competent jurisdiction as a final order.
12. **Termination by Grantee:** Grantee shall have the right to terminate this Agreement at any time upon written notice to Grantor of Grantee's exercise of its right to terminate its use of the Railway. In the event Grantee exercises its right to terminate this Agreement, then Grantee and Grantor agree to execute a notice of termination of the easement for filing with the Monroe County Recorder in a form reasonably acceptable to Grantor and Grantee.
13. **Paragraph Headings.** The captions in this Agreement are for convenience only and shall not be deemed to be a part hereof.
14. **Amendment.** This Agreement may not be modified or amended except by a written agreement duly executed by the parties hereto or by their respective successors or assigns, as the case may be.
15. **Entire Agreement.** This Agreement fully sets forth all agreements and understandings of the parties to this Agreement with respect to the subject matter hereof.
16. **Recording.** This Agreement shall be executed in recordable form and either party shall have the right to record, at its expense, this Agreement at the Office of the Recorder of Monroe County, Ohio.

(Signatures and Notary Provisions on Next Page)

Signature Page for Easement for Use of Railway

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

GRANTOR:

Ormet Railroad Corporation,
a Delaware corporation

By: [Signature]
Name: Michael F. Thompson
Its: PRESIDENT & CEO

GRANTEE:

Hannibal Real Estate, LLC,
a Delaware limited liability company

By: [Signature]
Name: Jeffrey A. Himmel
Its: Managing Member

STATE OF Ohio, ss:
COUNTY OF MONROE

The foregoing Instrument was acknowledged before me this 3 day of July, 2007 by Ormet Railroad Corporation, by Michael F. Thompson its PRESIDENT & CEO on behalf of and under authority of such company.



BRENDA MIRACLE
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 12/14/2011
2006-05-14521

[Signature]
Notary Public

STATE OF NEW YORK,
COUNTY OF WESTCHESTER, ss:

The foregoing Instrument was acknowledged before me this 26 day of June, 2007 by Hannibal Real Estate, LLC by Jeffrey A. Himmel, its Managing Member, on behalf of and under authority of such company.

LORRAINE C. DEMATTIA
Notary Public, State of New York
No. 4885394
Qualified in Westchester County
Commission Expires 3/1/2011

[Signature]
Notary Public

This Instrument prepared by:	After recording please return to:
Michael N. Schaeffer, Esq. 88 West Mound Street Columbus, OH 43215 (614) 224-2678	

EXHIBIT 2

OPERATING AGREEMENT

THIS AGREEMENT is made and entered into as of this Twelfth (12th) day of December, 2012, by and between HANNIBAL REAL ESTATE, LLC, a Delaware limited liability company with its principle office at 711 Westchester Avenue, White Plains, NY 10604, hereinafter known as "HRE" and OHIO TERMINAL RAILWAY COMPANY, an Ohio corporation with its principle office at 519 Cedar Way, Building 1, Suite 100, Oakmont, Pennsylvania 15139, hereinafter known as "OTRC".

WITNESSETH

WHEREAS, HRE is the owner of certain real property in Monroe County, Ohio described on Exhibit "A" attached hereto and incorporated herein by reference (the "Industrial Park"); and

WHEREAS, by Easement for Use of Railway dated July 5, 2007, between Ormet Railroad Corporation ("ORC"), Grantor, and Hannibal Real Estate, Grantee (the "Easement"), HRE has the right to use a railway line that abuts HRE's property and is more fully described below (the "Railroad Premises"); and

WHEREAS, HRE desires to secure a qualified railroad operator for the Railroad Premises and the Industrial Park; and

WHEREAS, HRE desires to create a seamless rail service that will connect its Industrial Park Tenants and Ormet to the Norfolk Southern Railway network.

WHEREAS, HRE's affiliate Arteco Group International operates a steel service center and a plate rolling mill at the Industrial Park and desires the provision of economical and efficient rail transportation; and

WHEREAS, OTRC has represented to HRE its ability to perform in accordance with qualifications set forth in OTRC's Proposal for Rail Management and Operating Services; and

WHEREAS, all of the Railroad Premises will be made available for OTRC to operate under the terms of this Agreement;

NOW THEREFORE, the parties intending to be legally bound agree as follows:

1. Description of Rail Premises

The Railroad Premises is all that certain property of Ormet Railroad Corporation, being a portion of the line of railroad known as the Ormet Running Track and identified as Line Code 2231 in the Recorder's Office of Monroe County, Ohio in Deed Book Volume 22 at Page 859, situate in Monroe County, Ohio, all as indicated by "PS" on map sheets 1 through 15 attached thereto and being further described as beginning at approximately

Railroad Milepost 60.5, being the southerly property line of the Norfolk Southern ("NS") River Line, in the Township of Switzerland thence extending in a general southerly direction to Railroad Milepost 72.7 in the Township of Ohio, the place of ENDING.

2. Use of Rail Premises

HRE hereby agrees to accord OTRC, exclusive access to and use of the Railroad Premises which shall include, but not be limited to all of the property of every kind and description, real, personal and mixed, including the right of way, roadbed, tracks, track materials, poles, wire lines, signals and other facilities, buildings and appurtenances. OTRC shall have the exclusive right to use the Railroad Premises for railroad service to establish, operate and maintain common carrier freight rail service thereon during the term of this Agreement, or any extension or renewal thereof, subject to the terms and conditions hereinafter contained. This Agreement shall not be construed as conveying any ownership interest in the Railroad Premises, the Easement, or the Industrial Park to OTRC.

3. Term

The term of this Operating Agreement shall commence on December 12, 2012, and continue for a period of seven (7) years unless terminated prior thereto in accordance with Sections 15 or 16 of this Agreement. This Agreement shall automatically renew for additional five (5) year terms, unless terminated prior thereto in accordance with Section 15 and 16 of this Agreement. This Agreement will terminate during any term if OTRC is in default under the provisions of the Agreement which has not been cured by OTRC within the cure period.

4. Operating Fee

(a) In consideration for the franchise granted herein OTRC shall be obligated to pay HRE an Operating Fee for the use of the Railroad Premises from the date hereof as determined as follows:

(b) After the first revenue carloads of Interline Revenue (NS Handling Line) is earned each year, OTRC will share a portion of the Interline Revenue (NS Handling Line) with HRE as follows:

Commodity	STCC	Factor
Frac Sand		
Steel		
Scrap Steel		
Alumina		
Petrochemicals		
Dimensional Loads*		
All Other		

* Dimensional Loads shall be defined as loads on heavy capacity and special type cars, as listed in the Official Railway Equipment Register and to shipments exceeding 11 feet in width (either load or car), 17 feet in height over top of rail (combined load and car), or 286,000 lbs gross weight on rail.

(c) OTRC shall be entitled to the first ~~50%~~ revenue carloads ~~50%~~ of Interline Revenue each year.

(d) OTRC shall pay HRE the Revenue sharing fees within 10 days of receipt of Interline Settlement from NS.

(e) OTRC shall be entitled to keep any payments for fuel surcharges received from the NS.

5. Condition of Railroad Premises

(a) OTRC has inspected the Railroad Premises and accepts the same "AS IS." HRE makes no representation or warranty as to the physical condition of the Railroad Premises or the condition of the legal title (other than for railroad purposes). Upon termination of this Agreement, OTRC shall return the Railroad Premises to HRE in the same condition which existed when OTRC received it from HRE or as later rehabilitated by OTRC, except for normal wear and tear, provided, however, said Railroad Premises shall at no time be maintained by OTRC in condition that does not minimally comply with FRA Class I Standards.

(b) After three (3) years of operation OTRC will commence upgrading the Railroad to FRA Class II standards at the rate of one contiguous mile of railroad per year and maintained to same for the life of the agreement once the Class II standard is reached on the full length of the Railroad.

6. Provision of Additional Equipment and Facilities

OTRC shall be responsible for providing all equipment and facilities as may be required to provide rail freight service on the Railroad Premises and at the Industrial Park as contemplated by this Agreement. HRE will lease office space and locomotive service facilities as may be required by OTRC at the Industrial Park at HRE preferred client rates.

7. OTRC Obligations upon execution of the Agreement.

- (a) Within 30 days file with the STB to operate the Railway line.
- (b) Within 60 days enter into a handling line agreement with the IRS.
- (c) Within 60 days subscribe to the required AAR Interchange Rules and other related tariffs.
- (d) Within 60 days provide a 3 year capital plan, identifying any public monies.

- (e) Within 60 days notify the FRA of intention to begin operation.
- (f) Within 90 days, enter an Interline Service Agreement with the NS.
- (g) Within 120 days, move locomotive (s) to the property and establish operations.

8. OTRC Obligations during the term of the Agreement.

OTRC agrees that it will at all times during the continuance of this Agreement:

- (a) Pay all charges herein requested to be paid by HRE under Paragraph 4 at such time as the same are due and payable, which charges may be recovered by HRE in the same manner as any charge due or in arrears.
- (b) Operate freight service in accordance with all applicable federal, state and local requirements and shall be responsible for obtaining all governmental approvals, authorizations, franchises, licenses and permits as may be prerequisite to the rendering of such service;
- (c) Observe and comply with any and all requirements of the constituted public authorities and with all applicable Federal, State and local statutes, ordinances, regulations and standards applicable to OTRC or its use of the Railroad Premises;
- (d) Maintain and operate at its own expense the Railroad Premises, including any buildings used by or subleased by OTRC thereon in good operating condition and repair in a manner consistent with sound, accepted engineering principles and maintain the track to meet or exceed FRA Class I Standard or when applicable FRA Class II in accordance with clause 5(b)
- (e) Upon request, OTRC will provide to HRE, or its engineer, copies of all FRA and state track inspector reports as they are received. OTRC will also make available to HRE regular track inspection reports as performed by their employers or subcontractors.
- (f) Repair or replace at its own expense, any rails, ties and other items of track or signaling equipment as may be necessary to keep Railroad Premises in good operating condition. In the event any such replacement is made at the expense of OTRC the new property shall become the property of the owner of the Railroad Premises and the removed property shall become the property of owner regardless of whether such removed property is sold or retained by the owner as materials and supplies;
- (g) OTRC shall operate a number of round trip trains per week between the Industrial Park and the NS Interchange more or less equivalent to the number of NS round trips to the interchange provided sufficient traffic is delivered to OTRC at the interchange to reasonably justify running a round trip to the interchange. OTRC shall provide switching within the Industrial Park and the adjacent Ormet Corporation property as required to properly service the needs of the tenants of the Industrial Park Tenants and

the Ormet Corporation property. OTRC shall additionally provide any accessorial services as required to properly service the needs of the tenants of the Industrial Park and the Ormet Corporation property in accordance with OTRC's Freight Tariff 8100 Series. OTRC shall provide customer sidetrack switching in accordance with standard industry sidetrack agreements.

(h) Fully indemnify, defend and hold harmless HRE, its officers, agents, employees, successors and assigns, from and against all claims and actions, based upon or arising out of damage or injuries to persons or property caused by the negligence of OTRC, or its agents, employees, guests, invitees, contractors, suppliers of materials, or furnishers of service in the use and occupancy of the Railroad Premises by the OTRC; except that this provision shall not apply to contractors hired by HRE;

(i) Be liable, defend and indemnify HRE for any damages, harm or injury to the Railroad Premises caused by the negligence of the OTRC, its agents or employees.

(j) Maintain a policy or policies of liability insurance with insurance companies authorized to do business in Ohio to insure itself against liability for injury or damage to persons and property, which policies will be in the minimum amounts set forth below:

	<u>Type</u>	<u>Limits</u>
(i)	Comprehensive Railroad Liability Insuring against claims for	For all claims \$20,000,000 per occurrence
	(a) Bodily Injury	Covered by blanket policy noted in (i)
	(b) Property Damage	\$10,000,000 Covered by blanket policy noted in (i)
(ii)	Federal Employers Liability Act	Covered by blanket policy noted in (i)
(iii)	Cargo Legal Liability	Covered by blanket policy noted in (i)
(iv)	Foreign Rolling Stock	Covered by blanket policy noted in (i)
(v)	Railroad Accident Pollution	Covered by blanket policy noted in (i)
(vi)	Automobile Liability	\$1,000,000

(k) Cause OTRC and HRE to be named as additional insured under each such policy (other than Employer's Liability) and furnish OTRC and HRE appropriate certificates of such insurance which shall specifically contain endorsement for railroad operations, state that the insurance company shall furnish to OTRC and HRE at least thirty (30) days notice of any lapse or material changes in such insurance, and waive subrogation.

(l) HRE may perform its own inspection of the Railroad Premises at any time but will not be obligated to do so.

(m) Peacefully deliver up and surrender possession of the Railroad Premises to HRE at the expiration or other termination of this Agreement.

(n) OTRC, upon written request by HRE, shall also pay and discharge, on or before the last day on which payment may be made without penalty or interest, any tax (except real property tax), assessment charges for public utilities, excise, license and permit fee and other governmental impositions and charges which shall or may during the term hereof be charged, laid, assessed, imposed, become due and payable, or a lien upon, or arising in connection with the use or operation of the Railroad Premises for freight service. OTRC shall have the right to contest any such taxes or other charges by appropriate legal proceedings, conducted at its own expense, provided that OTRC shall furnish to HRE sufficient funds to cover the amount of the contested item or items, with interest and penalty for the period which such proceedings may be expected to take.

9. Restrictions

OTRC further agrees that it will not:

(a) Occupy the Railroad Premises in any way or for any purposes unrelated to the operations of the Railroad Premises;

(b) Assign, mortgage, pledge or encumber the Railroad Premises or any part thereof or assign its obligation under this Agreement without the prior written consent of HRE;

(c) Permit the operation of or operate any passenger, commuter, special, or excursion trains over the Railroad Premises, or

(d) Handle hazardous commodities without requisite insurance, Federal Certificate, Security Plan and employee training.

10. Special Conditions

(a) OTRC agrees not to remove or relocate any ORC or HRE-owned equipment or railroad property on the Railroad Premises or the Industrial Park without the express written consent of the respective owners.

(b) OTRC agrees not to charge any surcharge or switching fees except as duly noted in its Freight Tariff 8100 Series, provided however that a surcharge may be assessed to recover OTRC cost and expense of construction of interchange facilities if applicable.

(c) OTRC agrees to provide confidential annual financial reports which represent total period revenues, total period expenses and total cash on hand and a yearly financial statement prepared by OTRC's accountant.

(d) OTRC will cooperate with any request for information by HRE in regard to any audit being performed at the direction and approval of HRE and will agree to make available all information and records relating to activities under this Agreement, provided disclosure of such information is permitted by the provisions of 49 U.S.C. §11904 and is maintained in confidence by HRE.

(e) OTRC will cooperate with HRE for the maintenance of the rail track within the Industrial Park and will provide its engineering expertise and benefit of OTRC maintenance of way contracts at cost but at HRE's expense to ensure that the Industrial Park track is kept in a serviceable condition.

(f) OTRC has responsibility for the maintenance of the switch located on the sub end of the Omal Running track that provides service into the Industrial Park.

11. Relationship between OTRC and HRE

(a) The OTRC and HRE shall jointly market the availability of OTRC rail service and the availability of Industrial Park capacity to any prospective customer that approaches either party. HRE and OTRC shall work together to plan the rail oriented development at the Industrial Park to maximize utilization of the rail services.

(b) The OTRC and HRE shall meet at least quarterly to review and discuss market opportunities, operations, service issues and capital expenditure planning. OTRC shall inform HRE and affected shippers of any major action or event related to the Railroad Premises which may affect rail freight service to those shippers as soon as such action or event is known to OTRC. HRE will inform OTRC of any issues or concerns related to the rail freight service. OTRC is an independent contractor and is not an agent of HRE.

12. Rents from Non-Operating Properties

OTRC shall be solely responsible for managing and preparing all agreements related to the occupation of the Railroad Premises by non-railroad occupants. OTRC shall be entitled to receive ~~OTRC~~ of any and all rents and royalties arising from any leases, easements and right of way of non-operating properties presently outstanding on any portion of the Railroad Premises and any renewals thereof, including, but not limited to, rents, license fees, and other revenues paid by utilities occupying a portion of the

Railroad Premises with poles and wire, and rentals and fees for signboards, platform locations, driveways, storage facilities, side tracks, pipe line crossings, water rights, land rents, building rents and water tank rents and rents and license fees for fiberoptic cables or other non-railroad uses of the right of way. OTRC shall collect such amounts as they become due and promptly pay the balance due to OTRC or HRE.

13. Capital Improvements

OTRC shall have the responsibility to construct, or manage the construction of, all capital improvements on that part of the Railroad Premises on which it conducts its operations and any work performed under Paragraph 8 hereof, pursuant to the development of an annual Capital Improvement Budget that is jointly approved by HRE and OTRC to the extent funds are available for such. OTRC shall abide by all reasonable conditions imposed by HRE on the construction of such improvements, including conditions of governmental agencies providing any of the funds required therefore. Should HRE and OTRC agree to undertake any capital projects not otherwise specified in this agreement which shall be funded in whole or in part by OTRC, the parties shall agree to extend the term of this agreement to permit OTRC to recover its capital costs and to earn a reasonable return on its capital investment.

14. Road Crossings

During the term of this Agreement or any renewal thereof, OTRC shall assume and be responsible for any obligation flowing to HRE as a result of obligations which may be imposed under the provisions of Ohio laws and any orders issued thereunder with respect to crossing of the Railroad Premises by public highways or utilities.

15. Condemnation of Railroad Premises

If the Railroad Premises, or any portion thereof, are condemned or taken by any competent authority for public use, the award for payment of damages resulting therefrom, or any amount paid in settlement thereof, shall be paid to and retained by HRE except as hereinafter provided. If the entire Railroad Premises are so taken or such substantial part thereof as shall materially impair or interfere with OTRC's proper use and enjoyment thereof, this Agreement shall automatically terminate as of the date of the taking and OTRC shall be entitled to the Financial Settlement detailed in Paragraph 18. If only such portion of the Railroad Premises are taken and shall not materially impair or interfere with the Railroad's proper use and enjoyment thereof, this Agreement shall continue in full force and effect, and all proceeds of the condemnation award or payment shall first be used by HRE as may be required for the restoration of the Railroad Premises in such a manner as will enable the continuing operation thereof by the OTRC as hereinabove provided.

16. Default

If during the term of this Agreement there shall occur any of the following events ("Events of Default"):

- (a) OTRC shall fail to pay any operating fee provided for in this Agreement within thirty (30) days of the due date thereof, unless such items are disputed in good faith by OTRC;
- (b) OTRC shall fail to perform any other of its obligations hereunder, and shall not cure such default within sixty (60) days after written notice thereof shall have been given to OTRC by HRE, or if such default cannot be cured within such period. If OTRC fails to commence to cure within such period and thereafter diligently proceed to complete the same;
- (c) OTRC makes an assignment for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law or is adjudicated as bankrupt or insolvent in involuntary proceedings or seeks reorganization or receivership, or similar relief; or
- (d) A proceeding against OTRC seeking reorganization or receivership or similar relief is not dismissed or vacated or stayed on appeal within sixty (60) days;
- (e) OTRC fails to maintain the railroad track in accordance with the terms of this Agreement or fails to conduct its operations in a manner consistent with generally accepted railroad safety practices;
- (f) Any conduct of its operations in such a manner so as to commit intentional waste of its rail properties;
- (g) Fail to discharge any claims or liens for materials and services for which OTRC becomes obligated while providing freight rail transportation services under this Agreement;
- (h) Fails to abide by any pre-existing agreement (i.e. sidetrack agreement, etc.) of which it is advised by OTRC or HRE, then and at any time thereafter while such Event of Default is continuing and has not been cured by OTRC within ninety (90) days after notification by HRE of such event;
- (i) Fails to interact with NS resulting in denied access or interchange rights;
or
- (j) Fails to correct a pattern of violations, although said violations have been cured within the cure period but the violations continue, OTRC will be in default of this Agreement.

However, in the case of 16(j), a continuing pattern of violations shall be a cause of termination.

HRE may in addition to its other remedies at law or equity or as provided for in this Agreement, by notice to OTRC specifying the event of Default and providing the required cure period, terminate this Agreement.

All of the remedies given to HRE by this Agreement and all rights and remedies given to it by law or equity shall be cumulative and concurrent. No termination of this Agreement or recovery of the Railroad Premises shall deprive HRE of any of its remedies or actions against OTRC for rent and all other sums due at the time of termination of this Agreement, nor shall any action for operating fees, breach of covenant or resort to any other remedies for recovery of operating fees be deemed or construed a waiver of the right to obtain possession of the Railroad Premises.

16. Failure to Cure Default

If OTRC shall fail to perform any of its obligations hereunder and shall fail to cure any default upon the giving of written notice and upon the time period specified in this Agreement or if OTRC shall not commence to comply within such period and thereafter complete with due diligence, HRE shall have the right, but not the obligation and in addition to all other remedies it may have hereunder, upon twenty-four (24) hour written notice to OTRC to undertake the performance of such obligations, including the right to enter the Railroad Premises in the performance thereof.

18. Financial Settlement on Termination and Termination Costs

In the event that this Agreement is terminated under Section 14 due to condemnation, there shall be a financial settlement as follows:

(i) OTRC and HRE shall conduct a final accounting and settlement of all OTRC accounts as of the termination date. All receivables, income, credits or money due or accrued and all payables, disbursements, debts or money owed or accrued on the termination date shall be charged to HRE. HRE shall remit to OTRC any positive cash balance due OTRC as of the termination date based on the final accounting and settlement hereunder.

(ii) HRE shall also pay to OTRC the reasonable and necessary costs specifically relating to and resulting from termination of service on the line. OTRC warrants that its termination costs exclusive of those under subparagraph (i) hereof, will not exceed ~~the amount of the cash balance~~. In the event of the settlement under subparagraph (j) above results in a negative cash balance, that balance shall reduce the amount due to OTRC on a dollar-for-dollar basis relative to this Section 18, subparagraph (iii).

(iii) HRE shall also pay to OTRC the net capital costs minus the depreciation of the preapproved capital budget items as agreed in the annual capital works plan

submitted to HRE for their approval. Additionally, this shall be subject to an audit by HRE.

19. Waiver

Any waiver by either party under this Agreement or any breach by any other party shall not affect similar rights subsequently arising or operate as a waiver of subsequent breaches of the same or similar kinds nor as a waiver of the clause or condition under which said right arose or said breach occurred.

20. Notice

Notice provided for herein shall be sufficient if sent by certified mail, postage prepaid, as follows:

To OTRC:

James E. Streett, President
Ohio Terminal Railway Company
519 Cedar Way, Building I, Suite 100
Oakmont, PA 15139
jimstreett@carloadexpress.com

To HRE:

Jeffrey A. Himmel, President
Hannibal Real Estate, LLC
711 Westchester Avenue
White Plains, NY 10604
Jeffrey@agi-plates.com

and

David Reid, Managing Director
Hannibal Real Estate LLC
42722 State Route 7
Hannibal Ohio 43931
david@hannibalre.com

or to such other address as either party may, from time to time, designate to the other in writing.

21. Regulatory Agency

(a) This Agreement is subject to the orders, rules and regulations as appropriate regulatory authorities having jurisdiction over OTRC.

(b) If any portion of this Agreement is determined to be unduly burdensome by such authority, the parties shall make such modifications as may be necessary or reasonable.

22. Access to Records

(a) OTRC agrees to maintain sufficient records and reports to permit HRE to fully verify statements of traffic, revenue, and expenditures furnished by OTRC and OTRC will agree to make such records available for any audit that may be performed including any audit conducted by HRE or ORC auditors or outside auditors subject to the confidentiality provisions of Paragraph 10.

(b) HRE shall have full access to these records and reports during normal business hours upon five (5) business days' written notice, duly given to OTRC.

23. Force Majeure

Neither party hereto shall be held responsible or liable, either directly or indirectly, or be deemed in default or breach of this Agreement for any loss, damage, injury, delay, failure or inability to meet all or any portion of its commitments hereunder caused by or arising from any cause which is unavoidable or beyond its reasonable control, including without limitation, war, hostilities, invasion, insurrection, riot, the order of any competent civil or military government, explosion, fire, strikes, lockouts, AAR service orders, actions of other carriers which materially affects OTRC's operations, labor disputes, perils of water including floods, ice, breakdowns, Acts of God including earthquakes, volcanic eruptions, solar disturbances or other intrusions from space, storms or other adverse weather conditions, derailments, washouts, wrecks or other causes of a similar or dissimilar nature which wholly or partially prevent the Parties or either of them from carrying out the terms of this Agreement; provided that the Party experiencing such force majeure or partial force majeure promptly gives to the other party written notice that the disabling effect of such force majeure shall be eliminated as soon as to the extent reasonably possible and that each Party shall have the right to determine and settle any strike, lockout and labor dispute in which that Party may be involved in its sole discretion. In the event that one Party's performance is suspended in whole or in part by force majeure, the other Party's obligation to perform hereunder shall be suspended or commensurately reduced for the duration of the force majeure and for such additional reasonable period as may be required because of the existence of the force majeure. In the event that one party's performance hereunder is suspended by force majeure and cannot be resumed within a reasonable period of time, either party shall have the right to terminate this Agreement.

24. Track Maintenance and Capital Improvements

(a) Track Maintenance. OTRC shall be solely responsible for maintaining the Railroad Premises to no less than the FRA Class I or Class II as appropriate Standards

(hereinafter referred to as the "Minimum Maintenance Standards"). Without limiting the foregoing, the parties further agree as follows:

(i) On or before January 1 of each year, OTRC shall prepare and submit to HRE's Managing Director a program (hereinafter referred to as the "Maintenance Program") setting forth the maintenance items to be performed during HRE's fiscal year to ensure that the Railroad Premises are maintained in accordance with the Minimum Standards.

(ii) Promptly thereafter, OTRC will review the Maintenance Program with HRE's Managing Director. OTRC shall at its own cost be responsible for maintaining the Railroad Premises in accordance with the Minimum Maintenance Standards as set forth in the Maintenance Program approved by HRE's engineer.

(iii) HRE's qualified inspector shall inspect the Railroad Premises at least twice each fiscal year to ensure that OTRC is maintaining the same in accordance with Good Maintenance Standards. Any deficiencies noted by HRE's qualified inspector, the Federal Railroad Administration or by the Public Utilities Commission of Ohio in its routine inspections of the Railroad Premises shall be promptly remedied by the OTRC at its sole cost and expense.

25. Labor Conditions

If during the term of this Agreement or subsequent renewal thereof, any labor protective conditions should be imposed as a result of a Surface Transportation Board or pursuant to the Railway Labor Act, OTRC agrees to fully indemnify HRE from the costs of said labor protective conditions.

26. Arbitration

Any claim or controversy arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Ohio in accordance with the Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof.

27. Successors and Assigns

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. However, this provision shall not be construed to confer on OTRC any right or authority to assign all or any part of this Agreement without HRE's prior written consent.

28. Change in Corporate Structure

If fifty-one (51%) percent or more of the ownership of OTRC is sold, HRE reserves the right to terminate this Operating Agreement. Notwithstanding the foregoing,

HRE shall give OTRC one (1) year after the change of ownership to provide assurances that the management team of OTRC is capable of performing the duties of OTRC under this Agreement.

29. Right of First Refusal

(a) In the event that HRE owns all or any part of the Railroad Premises, and if HRE receives a bona fide written offer by a third party to purchase all or part of the Railroad Premises which HRE intends to accept (the "Offer"), HRE shall give written notice to OTRC of the Offer (accompanied by a copy of such Offer).

(b) Within thirty (30) days after receipt of the written notice, OTRC shall have the right to notify HRE that OTRC is exercising its right of first refusal to purchase the Railroad Premises pursuant to a purchase agreement which incorporates the terms and conditions of the Offer. OTRC shall have one hundred twenty (120) days after the exercise of its right of first refusal to close on the purchase of the Railroad Premises.

(c) If OTRC fails to act within the above-referenced time periods (i.e., if OTRC fails to provide notice to HRE within thirty (30) days of receipt of the Offer that OTRC is exercising its right of first refusal, or if OTRC fails to close on the sale within one hundred twenty (120) days thereafter), then HRE shall be free to accept the Offer and complete the sale to the third party offeror.

30. Entire Agreement

This Agreement contains the entire understanding of the parties with respect to its subject matter. No oral statement or prior written matter shall have any force or effect. The parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Agreement. This Agreement shall not be modified except by a written instrument subscribed by both parties hereto.

31. Severability

If any term, covenant, condition or provision (or party thereof) of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

32. Applicable Law

This Agreement shall be construed in accordance with the laws of the State of Ohio, without regard to the internal conflicts of law principles of Ohio that would require application of any other law.

IN WITNESS WHEREOF, the parties hereto have caused this Operating Agreement to be executed by themselves or by their respective duly authorized officers as of the day and year first above written.

ATTEST:

OHIO TERMINAL
RAILWAY COMPANY

By: Tina R. Lane By: [Signature]

ATTEST:

HANNIBAL REAL ESTATE, LLC.

By: [Signature] By: [Signature]

EXHIBIT 3

42869

SERVICE DATE – JANUARY 11, 2013

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35703]

Ohio Terminal Railway Company—Operation Exemption—Hannibal Real Estate, LLC

Ohio Terminal Railway Company (OTRC),¹ a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.31 to operate a 12.2-mile line, known as the Omal Secondary Track, from milepost 60.5 at or near Powhatan Point, to milepost 72.7 at or near Hannibal, in Monroe County, Ohio (the Line), pursuant to an operating agreement with Hannibal Real Estate, LLC (Hannibal).

According to OTRC, in 1996, Ormet Railroad Corporation (ORC) acquired the Line from Conrail² and, subsequently, ORC was exempted from the requirements of 49 U.S.C. Subtitle IV pertaining to its ownership of the 12.2-mile line of railroad.³ OTRC states that, following the exemption, Hannibal was granted an easement over the Line by ORC in 2007 for the provision of rail service in connection with the development of an industrial park served by the Line.

¹ OTRC is a wholly owned, corporate subsidiary of Carload Express, Inc. (CEI), a non-operating rail holding company.

² See Ormet R.R.—Acquisition and Operation Exemption—Consol. Rail Corp., FD 32907 (STB served May 17, 1996).

³ See Ormet R.R.—Acquisition Exemption From 49 U.S.C. Subtitle IV, FD 32908 (STB served Oct. 16, 1996).

This transaction is related to a concurrently filed verified notice of exemption in Carload Express, Inc. – Continuance in Control Exemption – Ohio Terminal Railway Co., Docket No. FD 35704, wherein CEI seeks Board approval to continue in control of OTRC, upon OTRC's becoming a Class III rail carrier.

OTRC states that the operating agreement between OTRC and Hannibal does not contain any interchange commitments. OTRC also states that it will interchange with Norfolk Southern Railway at or near Powhatan Point, Ohio.

The transaction may be consummated on or after January 27, 2013 (30 days after the notice of exemption was filed).

OTRC certifies that its projected annual revenues as a result of the transaction will not result in OTRC's becoming a Class II or Class I rail carrier and will not exceed \$5 million.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by January 18, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35703, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Richard R. Wilson, 518 N. Center Street, Ste. 100, Ebensburg, PA 15931.

Docket No. FD 35703

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: January 8, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

EXHIBIT 4

45080
EB

SERVICE DATE – APRIL 1, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35984

OHIO RIVER PARTNERS LLC—ACQUISITION AND OPERATION EXEMPTION— HANNIBAL DEVELOPMENT, LLC

Digest:¹ This decision denies a request to reject the verified notice of exemption filed in this proceeding.

Decided: March 30, 2016

On January 7, 2016, Ohio Terminal Railway Company (OTRC) filed a petition to reject a verified notice of exemption filed by Ohio River Partners, LLP (ORP) to acquire and operate 12.2 miles of rail line in Monroe County, Ohio. By decision served on January 15, 2016, the Board put the proceeding into abeyance and postponed the effective date of the exemption to provide sufficient time to fully consider the arguments presented. This decision denies the petition to reject.

BACKGROUND

On December 18, 2015, ORP, a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from Hannibal Development, LLC (Hannibal Development), and operate 12.2 miles of rail line known as the Omal Secondary Track (the Line). The Line extends from milepost 60.5 at or near Powhatan Point to milepost 72.2 at or near Hannibal, in Monroe County, Ohio. In a concurrently filed verified notice of exemption in Fortress Investment Group LLC—Continuance in Control Exemption—Ohio River Partners, LLC, Docket No. FD 35985, Fortress Investment Group LLC (Fortress) sought Board approval to continue in control of ORP and two other rail carriers currently controlled by other companies within the Fortress corporate family following consummation of the proposed transaction. The separate notices of exemption were served and published in the Federal Register, 80 Fed. Reg. 81,878-79, on December 31, 2015. These notices stated that the exemptions would become effective on January 17, 2016.

On January 7, 2016, OTRC filed in this proceeding a petition to reject the notice of exemption to acquire and operate the Line. OTRC further requested that the Board stay the effectiveness of that exemption to afford the Board sufficient time to consider the arguments

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

presented.² OTRC argues that the streamlined notice of exemption procedures under § 1150.31 are not appropriate for the transaction contemplated by ORP because the transaction presents non-routine and controversial issues. OTRC notes that it has an easement to operate over the Line, see Ohio Terminal Ry.—Operation Exemption—Hannibal Real Estate, FD 35703 (STB served Jan. 11, 2013), and that the exemption would therefore permit dual operations over the Line. OTRC claims that dual operations would not be feasible based on the Line's limited capacity and constrained interchange facilities with Norfolk Southern Railway Company (NSR). OTRC is thus concerned about its ability to meet its common carrier obligation if the exemption becomes effective. It faults ORP for not addressing these issues in its verified notice and asserts that any such authorization should only be granted after a full regulatory review, including the development of a complete factual record.

OTRC also claims that ORP's notice should be rejected because it is false and misleading. OTRC argues that, beyond not addressing the issues presented by dual operations, ORP did not disclose that there is an ongoing dispute between Hannibal Development (ORP's proposed transferor)³ and Hannibal Real Estate, LLC (HRE), the owner of the easement operated by OTRC. OTRC asserts that there is a mediation/arbitration proceeding currently pending in Ohio between HRE and Hannibal Development regarding the scope of the easement under which OTRC operates; specifically, whether the easement permits Hannibal Development to allow another operator to use the Line.

In a reply filed on January 12, 2016, ORP argues that the Board should deny OTRC's petition because its notice of exemption contains all of the information that is required by the Board's regulations and is not false or misleading. ORP asserts that it did not need to disclose the easement dispute and that, regardless, such a dispute is not grounds for rejecting its notice. Similarly, ORP argues that dual operations on a line are common and that its notice did not need to address OTRC's operational or interchange concerns, which, ORP contends, are exaggerated and premature at this point.

NSR submitted a comment letter on January 22, 2016, in which NSR agrees with OTRC's description of the existing capacity and geography constraints on the ability of carriers to conduct interchange operations with NSR on the Line. NSR asks that, if another carrier is allowed to operate over the Line, the Board require agreement among NSR and the carriers on the Line to ensure efficient and safe interchange operations, citing Central Illinois Railroad—Operation Exemption—Rail Line of City of Peoria & Village of Peoria Heights in Peoria & Peoria Heights, Peoria County, Ill. (CIRY), FD 34518 (STB served July 1, 2004 & Feb. 23, 2005). NSR warns that, unless all carriers operating over the Line coordinate their operations, congestion and service failures will likely result.

² OTRC also filed a motion for protective order, which the Board granted on January 13, 2016.

³ OTRC states that all contacts regarding ownership addressed in its petition have been with Hannibal Development Partners, LLC, but it is not certain whether Hannibal Development is the same or a separate entity.

DISCUSSION AND CONCLUSIONS

An exemption under 49 C.F.R. pt. 1150 Subpart D is void ab initio if the notice contains false or misleading information. Failure to disclose material information can render a notice misleading by omission, and therefore void ab initio. See U S Rail Corp.—Lease & Operation Exemption—Shannon G., a N.J. LLC, FD 35042, slip op. at 3-4 (STB served Oct. 8, 2008). Material means the transaction would not have otherwise qualified for an exemption. See Berkshire Scenic Ry. Museum, Inc. v. ICC, 52 F.3d 378, 381 (1st Cir. 1995). Here, OTRC has failed to demonstrate that the information is false or misleading, or that the transaction is too controversial or non-routine for approval under the class exemption process. We will therefore let ORP's exemption become effective.

ORP has provided the information required by our regulations, and its failure to disclose the dispute between Hannibal Development and HRE does not make the notice false and misleading. The Board has found that its regulations at 49 C.F.R. §§ 1150.31-36 do not require the disclosure of such third-party contractual disputes, and the existence of such a dispute is not grounds for rejecting an exemption. See N. H. Cent. R.R.—Lease & Operation Exemption—Line of N. H. Dep't of Transp., FD 35022 (STB served Dec. 11, 2007); Ind. Ne. R.R.—Change in Operators—Branch & St. Joseph Cty.s, Rail Users Ass'n in Branch Cty., Mich., FD 33760 (STB served Sept. 1, 1999). However, the Board's grant of authority to operate under a notice of exemption is permissive only, and in order to exercise that authority and commence operations, the carrier must still obtain the necessary rights under state property and/or contract law.⁴ Where, as here, there is a dispute about whether an entity can exercise its operating authority by obtaining the property and/or contractual rights in a line of railroad, the dispute generally should be decided by a court, applying state law, and not by the Board. N.H. Cent. R.R., slip op. at 3 ("the issue of whether the lease agreement grants exclusive rights to Twin State [incumbent operator seeking rejection] lies within the purview of the courts, not with this agency."); see also Lackawanna Cty. R.R. Auth.—Acquis. Exemption—F&L Realty, Inc., FD 33905 et al., slip op. at 6 (STB served Oct. 22, 2001); Ind. Ne. R.R., slip op. at 3-4. Accordingly, this order permitting ORP's notice of exemption to become effective should not affect the ongoing proceeding in Ohio involving whether HRE's freight rail operating easement is exclusive, as the grant of permissive operating authority to ORP does not constitute a ruling on any of the parties' contractual or property claims or purported rights. See Saratoga & N. Creek Ry.—Operation Exemption—Tahawus Line, FD 35631, slip op. at 4 (STB served Oct. 11, 2012).

⁴ See, e.g., James Riffin—Pet. for Declaratory Order, FD 35245, slip op. at 6 (STB served Sept. 15, 2009), aff'd Riffin v. STB, No. 09-1277, 2010 WL 4924719 (D.C. Cir. Nov. 30, 2010) (per curiam) (permissive authority from the Board did not allow operation where the proposed operator lacked a suitable legal interest that would give him the ability to exercise that authority).

OTRC's claim that there is no information in the notice concerning dual operations and how such operations might be coordinated also does not warrant rejection of the notice. The exemption ORP has invoked does not require the information OTRC contends should have been provided here. Moreover, notices of exemption have been used to permit dual operations on capacity-constrained lines. See CIRY; City of Rochelle, Ill.-- Notice of Exemption-- Commencement of Rail Common Carrier Obligations, FD 33587 (STB served July 7, 1998); Luzerne & Susquehanna Ry.--Lease & Operation Exemption-- Certain Lines of Luzerne Cty. Rail, FD 32563, et al. (ICC served Sept. 1, 1994). We note that OTRC states that it anticipates working out joint use issues as part of the Ohio proceedings (see Pet., V.S. Peterson at 19-20), and we encourage these efforts. To ensure that such issues are satisfactorily resolved, we will adopt NSR's request and require that, before ORP may commence any operations on the Line, NSR, ORP, and OTRC must: (1) negotiate and agree on interchange and operating protocols, and (2) jointly certify to the Board that these protocols are in place. See CIRY. If there are issues that the parties cannot resolve on their own or other issues arise, any party may ask the Board to facilitate discussions or provide other relief.

It is ordered:

1. OTRC's petition to reject is denied.
2. ORP's exemption is effective immediately.
3. Before ORP may commence any operations on the Line, NSR, ORP, and OTRC must negotiate and agree on interchange and operating protocols, and jointly certify to the Board that these protocols are in place.
4. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

EXHIBIT 5

THIRD PARTY UTILIZATION AGREEMENT

THIS AGREEMENT is made and entered into as of this 21st day of February, 2017 by and between HANNIBAL REAL ESTATE, LLC, a Delaware Limited Liability Company with its principle office at 42722 State Route 7, Clarington, Ohio 43915, hereinafter known as "HRE," and OHIO TERMINAL RAILWAY COMPANY, an Ohio corporation with its principle office at 519 Cedar Way, Building 1, Ste. 100, Oakmont, PA 15139, hereinafter known as "OTRC".

WITNESSETH

WHEREAS, OTRC is required by 49 U.S.C. §11501 to offer common carrier rail service to the public on the OMAL Running Track under operating authorization granted by the Surface Transportation Board and,

WHEREAS, HRE has contracted with OTRC to make its Easement for Use of Railway available to provide rail services to its tenants in the HRE Industrial Park and,

WHEREAS, OTRC is now required to provide rail transportation to third parties to be served via the OMAL Running Track and,

WHEREAS, OTRC has agreed to compensate HRE for third party occupancy and utilization of its Easement for Use of Railway on the OMAL Secondary Track.

NOW THEREFORE, the parties, intending to be legally bound, agree as follows:

1. Third Party Use of Rail Easement

HRE agrees that, subject to the terms and conditions contained herein, OTRC may use its Easement for Use of Railway to provide railroad service to third parties who are served by the OMAL Running Track but are not located within the HRE Industrial Park.

2. Utilization Fee

(a) In consideration for the rights granted herein, OTRC shall be obligated to pay HRE a Utilization Fee for the use of the Easement for Use of Railway over and across the OMAL Running Track by third parties, (except for any railroad service related to the former Onnet property now known as CenterPoint Terminal) as described in Paragraph 1 above from the date hereof to be determined as follows:

(b) After the first ~~revenue~~ revenue carloads of Interline Revenue (NS Handling Line) is earned each year, OTRC will share with HRE a portion of the Interline Revenue (NS Handling Line) with regard to third party shipments by paying to HRE ~~of~~ of the base revenue factor as shown in the table below:

Commodity	STCC	Base Factor	of Base Factor
Frac Sand			
Steel			
Scrap Steel			
Alumina			
Petrochemicals			
Dimensional Loads			
All Other			

3. Term

Subject to the other terms and conditions set forth in Paragraph 3 of the Operating Agreement between HRE and OTRC dated December 12, 2017 (the "Operating Agreement"), the term of the Operating Agreement is amended to continue for a period of ten (10) additional years, through December 12, 2027.

4. Incorporation of Operating Agreement

In all other respects, the terms and conditions of the Operating Agreement dated December 12, 2017, including Paragraph 3 as amended above, and with the exception of Paragraphs 2 and 4 thereof, shall govern OTRC and HRE and are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have caused this Third Party Utilization Agreement to be executed by themselves or by their respective duly authorized officers as of the day and year first above written.

ATTEST:

By

OHIO TERMINAL RAILWAY CO.

By

PRESIDENT

ATTEST:

By

HANNIBAL REAL ESTATE, LLC.

By

PRESIDENT