

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

ORIGINAL



STB Finance Docket No. 34415

OHIO DEPARTMENT OF TRANSPORTATION
-PETITION FOR DECLARATORY ORDER-
STATUS OF TRACK AT FINDLAY, HANCOCK COUNTY, OH

PETITION FOR DECLARATORY ORDER
OF
OHIO DEPARTMENT OF TRANSPORTATION

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Michael L. Stokes
Senior Assistant Attorney General
Office of the Attorney General
One SeaGate (#2150)
Toledo, OH 43604-1551
Tel.: (419) 245-2550

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Special Counsel to the
Attorney General of Ohio

Attorneys for

OHIO DEPARTMENT OF TRANSPORTATION

FILED

NOV 07 2003

SURFACE
TRANSPORTATION BOARD

Dated: October 17, 2003

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Petitioner, Ohio Department of Transportation ("ODOT"), pursuant to section 5(d) of the Administrative Procedure Act, 5 U.S.C. 554(e), respectfully requests the Board to enter a declaratory order to terminate a controversy between it and Norfolk Southern Railway Company ("NS") concerning the status under the laws and regulations administered by this Board of approximately 807 feet of track at Findlay, Hancock County, OH. The agency heretofore has exercised its authority to resolve disputes such as the instant one. See STB Finance Docket No. 33989, Pejeboscot Industrial Park, Inc., d/b/a Grimm Industries-Petition for Declaratory Order, served May 15, 2003; STB Finance Docket No. 34111, North San Diego County Transit Development Board-Petition for Declaratory Order, served August 21, 2002; STB Finance Docket No. 34181, State of Wisconsin Department of Transportation-Petition for Declaratory Order, served August 1, 2002.

In support of its request, ODOT relies upon the appended Verified Statement of Daniel

M. Kaseman, Production Administrator for District One of ODOT, the Verified Statement of Candice Cehelnik, Development Coordinator of 84 Lumber Company, the arguments advanced in this Petition for Declaratory Order and its several attachments.

A.

ODOT needs to replace a highway bridge.

As is explained in the Verified Statement of Mr. Daniel M. Kaseman, the highway bridge on the by-pass of U.S. Highway 68/State Route 15 around Findlay in the vicinity of Lima Avenue is nearly fifty years old and in need of repair. More importantly, however, it does not meet current design standards for safety. Interstate Highway I-75 is just to the west of the bridge, and motorists driving on the by-pass are unable to see the interchange with I-75 until they are on top of the bridge. If there is a back-up caused by the merger of vehicles into traffic flows on I-75 or if slow-moving trucks are merging from Lima Avenue on the up-grade toward the I-75 interchange, the motorists may have difficulty braking in time to avoid a rear-end collision. In addition, because of the inadequate sight distance over the bridge, motorists may have to make an unsafe, last-minute decision to change lanes to be in the correct lane for the I-75 interchange.

In other words, the bridge fails to meet current standards for decision sight distance between the crest of the bridge and the interchange with Interstate Highway I-75. As part of the planned reconstruction project, ODOT plans to lower the grade of the bridge to allow the motorists to see the interchange with I-75, increasing the decision sight distance and enhancing the safety of motor vehicular operations.

The bridge crosses long unused track which formerly served the sugar plant of Great Lakes Sugar Company, and the replacement bridge would foreclose the restoration of service as

railroad cars would be unable to pass beneath it.

A map showing the highways and the affected track is attached as Attachment 1.¹

B.

ODOT sued to establish its entitlement to the track.

ODOT, by its Director, Gordon Proctor, filed a Complaint to Quiet Title and for Declaratory Judgment, docketed as Case No. 2002-CV-472, Gordon Proctor, Director, Ohio Department of Transportation v. Michigan Sugar Company, et al., in the Hancock County Court of Common Pleas. A copy of the Complaint is attached as Attachment 2.

The Complaint alleges, beginning at paragraph 4 on page 2, that approximately 3,607 feet of company-owned industry track serving the sugar plant of the Great Lakes Sugar Company, a Michigan corporation, in 1937 were conveyed by an easement grant to the New York, Chicago and St. Louis Railroad Company ("Nickel Plate"), a predecessor of NS. The easement grant was to continue until Great Lakes Sugar Company ceased operating its plant. In 1955 the Company sold its tract of land, including the sugar plant, to Northern Ohio Sugar Company, which the following year granted ODOT a perpetual easement over its property for the construction of the U.S. Highway 68/State Route 15 Findlay by-pass and the bridge over the former Nickel Plate track.

In 1985 the parcel of land south of the U.S. Highway 68/State Route 15 Findlay by-pass, including the sugar plant, was conveyed by Northern Sugar Company to Great Lakes Sugar Company, an Ohio corporation, the predecessor in interest of Michigan Sugar Company, the current owner of the property, and the following year the tract of land north of the Findlay by-

¹ The star on the map identifies the location of Michigan Sugar Company.

pass was conveyed by Northern Sugar Company to H&O Trucking and subsequently was divided between Jim Hickerson, d/b/a Jim Hickerson Excavating, and Pierce Hardy Limited Partnership, d/b/a 84 Lumber ("84 Lumber"), the current owners of the property.

The Complaint, beginning at paragraph 21 on page 5, states that 84 Lumber paid for the rehabilitation of approximately 2,300 feet of the former Nickel Plate industrial track, between NS' main line and a point past a loading dock which 84 Lumber had built to serve its facility. Beyond the track rehabilitated at 84 Lumber's expense, the track has been rendered completely unusable. The track has been paved over as a drive leading into the 84 Lumber facility, and an 84 Lumber sign has been erected straddling the rails. Many of the rails have been removed, a large number of the ties have rotted, several trees have large branches over the rails and some of the rail bed has washed away.

NS filed its separate Affirmative Defenses and Answer, a copy of which is attached as Attachment 3.² In paragraph 3 on page 1 of its pleading, NS "claims a right to use the rail spur, railway right of way, and easement it owns, in, on, over, and across the real estate which is the subject of this action." As part of its Fourth Affirmative Defense on page 6, NS contends that "[t]he proposed actions of the plaintiff exceed the authority of the plaintiff as they interfere with rail transportation and therefore are preempted by the Interstate Commerce Commission Termination Act of 1995 (the "ICCTA"), 49 U.S.C. Section 10101, et seq."

The Court, Judge Joseph H. Niemeyer, on September 5, 2003, entered a Pretrial Order staying the case for six months' time "to allow the referral of certain issues to the Surface

² Jim Hickerson, Pierce Hardy Limited Partnership and Northern Sugar Company elected not file answers and default judgments were entered against them. Michigan Sugar Company, however, remains a party to the court case, as does NS.

Transportation Board of the United States Department of Transportation." A copy of the Court's order is attached as Attachment 4. It is in response to the Court's order that ODOT seeks the Board's declaratory order.

C.

The track was spur or industry track.

Great Lakes Sugar Company, the Michigan company, had been the owner of a large, 107-acre tract of land at Findlay on which it erected a sugar plant. To secure railroad service, the company built a proprietary track extending between a connection with a main line of the Nickel Plate and its sugar plant. In 1937, by an easement grant, the Company conveyed approximately 3,607 feet of that track, extending between the railroad's main line and the sugar plant, to the Nickel Plate.

It stands to reason that the character of the track was not changed as a result of its conveyance to the Nickel Plate. The track was industry track before the easement grant, and it remained industry track afterwards, albeit operated by the Nickel Plate rather than by Great Lakes Sugar Company.

Whether the approximately 3,607 feet of track was industry track, as ODOT contends, or a rail spur, as NS refers to it in its Affirmative Defenses and Answer, however, is immaterial. The Board is without jurisdiction to pass on the proposed acquisition or abandonment of the one as of the other. 49 U.S.C. 10906, in part, provides, "The Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks." See, STB Docket No. AB-55 (Sub-No. 562X), CSX Transportation, Inc.—Abandonment Exemption—In Rocky Mount, Nash County, NC, served

December 1, 1999; STB Finance Docket No. 33601, Grand Trunk Western Railroad Incorporated—Petition for Declaratory Order—Spur, Industrial, Team, Switching or Side Tracks in Detroit, MI, served July 30, 1998.

At times there may some question as to whether particular track should be considered to be a railroad line, on the one hand, or, on the other, spur or industry track. See, Hughes v. Consol-Pennsylvania Coal Co., 945 F.2d 594, 612 (3rd Cir. 1991); CNW—Aband. Exemp.—In McHenry County, IL, 3 I.C.C.2d 366, 367 (1987), rev'd on other grounds sub nom, Illinois Commerce Com'n v. ICC, 879 F.2d 917 (D.C. Cir. 1989). The track which served the Great Lakes Sugar Company sugar plant, however, occasions no such doubt as to its status. Its history, past use and physical characteristics unquestionably were those of spur or industry track. The track was built by the shipper and was short, being only 3,607 feet long,. It was stub-ended and served only the one shipper, whose sugar plant was located at the end of the track. The track did not have regular scheduled service and handled relatively little traffic, and no station was on the track. The track was not built to invade the territory of another railroad and was used solely to switch cars to and from the sugar plant. Thus, the track possessed the very characteristics that distinguish spur or industry track from a railroad line. See, STB Docket No. AB-55 (Sub-No. 622X), CSX Transportation, Inc.—Abandonment Exemption—In Pike County, OH, served May 5, 2003; STB Finance Docket No. 333522, Chicago Southshore & South Bend Railroad—Petition for Declaratory Order—Status of Track at Hammond, IN, served December 17, 1998; Finance Docket No. 32058, Battaglia Distributing Co., Inc. v. Burlington Northern Railroad Company, served June 27, 1997. The character of the track has not changed in the interim.

As Ms. Candice Cehelnik of 84 Lumber Company discusses in her Verified Statement, NS

sold its interests in the first approximately 2,800 feet of the former Nickel Plate track to 84 Lumber some time in late 1998 . NS' offer to sell the property to 84 Lumber is attached as Attachment 5. To ODOT's knowledge, 84 Lumber neither applied to, nor secured from, the Board authority to acquire the track. This is a further indication that the parties to the transaction deemed the track to be spur or industry track, the acquisition of which required no Board approval, rather than a line of railroad, which cannot be conveyed except pursuant to the Board's section-10901 authorization. 84 Lumber contracted at the cost of \$44,822.00 to have the first approximately 2,300 feet of the track rehabilitated, including the replacement of 1,1000 defective ties³ and the addition of 350 tons of new ballast. See, Attachment 6. That section of the track, now the property of 84 Lumber, was found by NS to be acceptable for service in March of 1999. See, Attachment 7. The remaining approximately 807 feet of track south of the track sold by NS to 84 Lumber, extending to the U.S. Highway 68/State Route 15 Findlay by-pass bridge, through a tunnel beneath the bridge and unto the property of Michigan Sugar Company, in large measure have been allowed to go to seed.

D.

The remaining approximately 807 feet of track have been abandoned.

It is what remains of the former Nickel Plate track south of the segment sold to 84 Lumber, extending to the U.S. Highway 68/State Route 15 Findlay by-pass bridge, through a tunnel beneath the bridge and unto the property of Michigan Sugar Company, for a total of approximately 807 feet, which is the subject of the controversy between ODOT and NS.

³ Since on average there are 3,000 ties per mile of track, the replacement of 1,100 defective ties in less than half a mile of track demonstrates that the track was in such deplorable condition that virtually every tie required replacement ($2,300 \div 5,280 \times 3,000 = 1,307$).

Assuming for argument's sake, that NS continues to have an interest in the approximately 807 feet of former Nickel Plate track, NS has allowed the track's *de facto* abandonment. NS sold its interest in the first 2,800 feet of the former Nickel Plate track to 84 Lumber, thereby cutting off the remainder, rendering NS incapable of originating or terminating rail freight shipments on the disputed 807 feet of former Nickel Plate track. NS cannot have it both ways. It cannot surrender its ability to access to a segment of track by selling to a shipper the track required to reach it and yet contend that the isolated track segment continues to be an active line of railroad which cannot be acquired or abandoned except pursuant to the Board's authorization.

As noted by Mr. Kaseman of ODOT in his Verified Statement, the track has been rehabilitated by 84 Lumber for about 200 feet past the loading dock. Beyond that point, however, the track is in shambles. Pieces of rail have been removed for much of the next 750 feet of the track's length. Most of the ties have rotted to the point that Mr. Kaseman was able to pull out spikes by hand. Several trees have grown thick branches over the rails. And at places the rail bed has washed out altogether, with no ballast or sub-grade in place.

The end of the 750-foot segment is about 100 feet north of the U.S. Highway 68/State Route 15 right-of-way for the highway bridge. At that point, the track has been paved over for an asphalt drive into the lumberyard, and an 84 Lumber directional sign has been mounted on 4x4 posts straddling the rails. Between the asphalt drive and the bridge, many ties were rotted to the point that Mr. Kaseman was able to pull out spikes by hand..

Where it is sheltered under the bridge, the track is in fairly good shape. As the track emerges from beneath the bridge, however, it is buried under thick turf and soil. One rail is buried for about 200 feet. About 600 feet into the northerly side of Michigan Sugar's property, a switch

divides the single track into two segments roughly 180 and 150 feet long. Along the single track and along each of the two segments, the ties were so rotted that Mr. Kaseman was able to pull out spikes in dozens of places. Both segments ended several hundred feet short of the Michigan Sugar Building. All of the other trackage shown on the 1956 rail relocation drawing attached to Mr. Kaseman's Verified Statement has been removed.

It was evident to Mr. Kaseman that the track hadn't been used in years. Indeed, ODOT was advised by the local manager of Michigan Sugar Company, Mr. Tom Brickley, that the sugar company hasn't received railroad service over the track for at least 12 to 15 years' time. Such long disuse of the track without any manifestation of an intent on the part of NS to resume operations constitutes a *de facto* abandonment. See, Meyers v. Jay Street Connecting Railroad, 259 F.2d 532, 535 (2d Cir. 1958); Modern Handcraft, Inc.—Abandonment, 363 I.C.C. 969, 971 (1981), vacated on other grounds, sub nom., Kansas City Pub. Ser. Frgt. Operations—Exempt—Aban., 7 I.C.C.2d 216, 225 (1990).

In a similar situation, the Board's predecessor, the Interstate Commerce Commission, in Akron & B.B.R. Co. Abandonment of Operation, 239 I.C.C.250, 254 (1940), declared:

We have held heretofore, where abandonment was accomplished without our permission first having been obtained, that subsequent applications for such permission presented nothing upon which we could act. *Atlantic Coast Line R. Co. Abandonment*, 162 I.C.C. 497; *Pittsburgh, C., C & St. L. R. Co. Acquisition*, 162 I.C.C. 617. Therefore, we think the proper disposition of the proceeding is to leave the parties where we find them.

In short, where, as here, there has been a *de facto* abandonment of the approximately 807 feet of track in question, the Board should take no further action even if NS were to file an abandonment

application or, alternatively, ODOT, an adverse abandonment application.⁴

E.

The State court action is not preempted.

While undoubtedly the preemption provision of 49 U.S.C. 10501(b) is sweeping, State court action is preempted only insofar as "remedies [are] provided under this part with respect to regulation of rail transportation." As we have shown, however, the former Nickel Plate track was spur or industry track the acquisition or abandonment of which is beyond the Board's regulatory authority to approve or disapprove. Moreover, the approximately 807-foot segment of the former Nickel Plate track south of the 84 Lumber's segment, extending to the U.S. Highway 68/State Route Findlay by-pass bridge, through a tunnel beneath the bridge and unto the property of Michigan Sugar Company, has been *de facto* abandoned. In short, there is no further action which the Board can, or should, take even if NS were to file an abandonment application or, alternatively ODOT, an adverse abandonment application. NS' assertion of Board preemption in the action before the Common Pleas Court of Hancock County is a transparent attempt to try to avoid an adverse judgment in the suit brought by ODOT. In Modern Handcraft,

Inc.—Abandonment, supra, 363 I.C.C. at 972, the Commission held:

We will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of State law where there is no overriding Federal interest in interstate commerce. Where as here there have been no rail operations over 12 years and no attempt to provide rail service, we find no public benefit in preventing a State

⁴ More recently, the Board has indicated that track is not abandoned until the Board has authorized its abandonment and the abandonment has been consummated. See, STB Finance Docket No. 33508, Missouri Central Railroad Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company, served April 30, 1998; Finance Docket No. 32518, The Phillips Company – Petition for Declaratory Order, served April 18, 1995. The tracks therein considered, however, were railroad lines and not spur or industry tracks.

condemnation proceeding.

Accord, STB Docket No. AB-596, New York City Economic Development Corporation--
Adverse Abandonment--New York Cross Harbor Railroad in Brooklyn, NY, served May 12,
2003; STB Docket No. AB-31 (Sub-No. 38), CSX Corp. and CSX Transportation, Inc.--Adverse
Abandonment Application--Canadian National Railway Company and Grand Trunk Western
Railroad Inc., served February 1, 2002; STB Docket No. AB-290 (Sub-No. 184X), Norfolk and
Western Railway Company--Abandonment Exemption--In Cincinnati, Hamilton County, OH,
served May 13, 1998. A similar finding by the Board is warranted herein.

Mr. Kaseman following his inspection of the track concluded that lowering the bridge of
the U.S. Highway 68/State Route 15 Findlay by-pass in no way will alter the situation as it now
exists. There is not and cannot be any railroad service rendered on the disputed track, and,
therefore, the rebuilding of the bridge will not in any way disrupt the flow of railroad traffic on the
track.

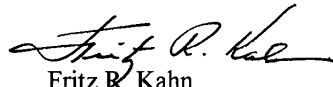
WHEREFORE, the Ohio Department of Transportation asks the Board to render a declaratory order finding that the disposition of the track which would be affected by the proposed lowering of the U.S. Highway 68/State Route Findlay by-pass bridge is not within the agency's jurisdiction and that the case before the Common Pleas Court of Hancock County is not preempted by 49 U.S.C. 10501(b). A copy of the agency's decision should be sent to Judge Joseph H. Niemeyer.

Respectfully submitted,

OHIO DEPARTMENT OF TRANSPORTATION

By its attorneys,

Michael L. Stokes
Senior Assistant Attorney General
Office of the Attorney General
One SeaGate (#2150)
Toledo, OH 43604-1551
Tel.: (419) 245-2550


Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

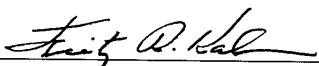
Special Counsel to the
Attorney General of Ohio

Dated: October 17, 2003

CERTIFICATE OF SERVICE

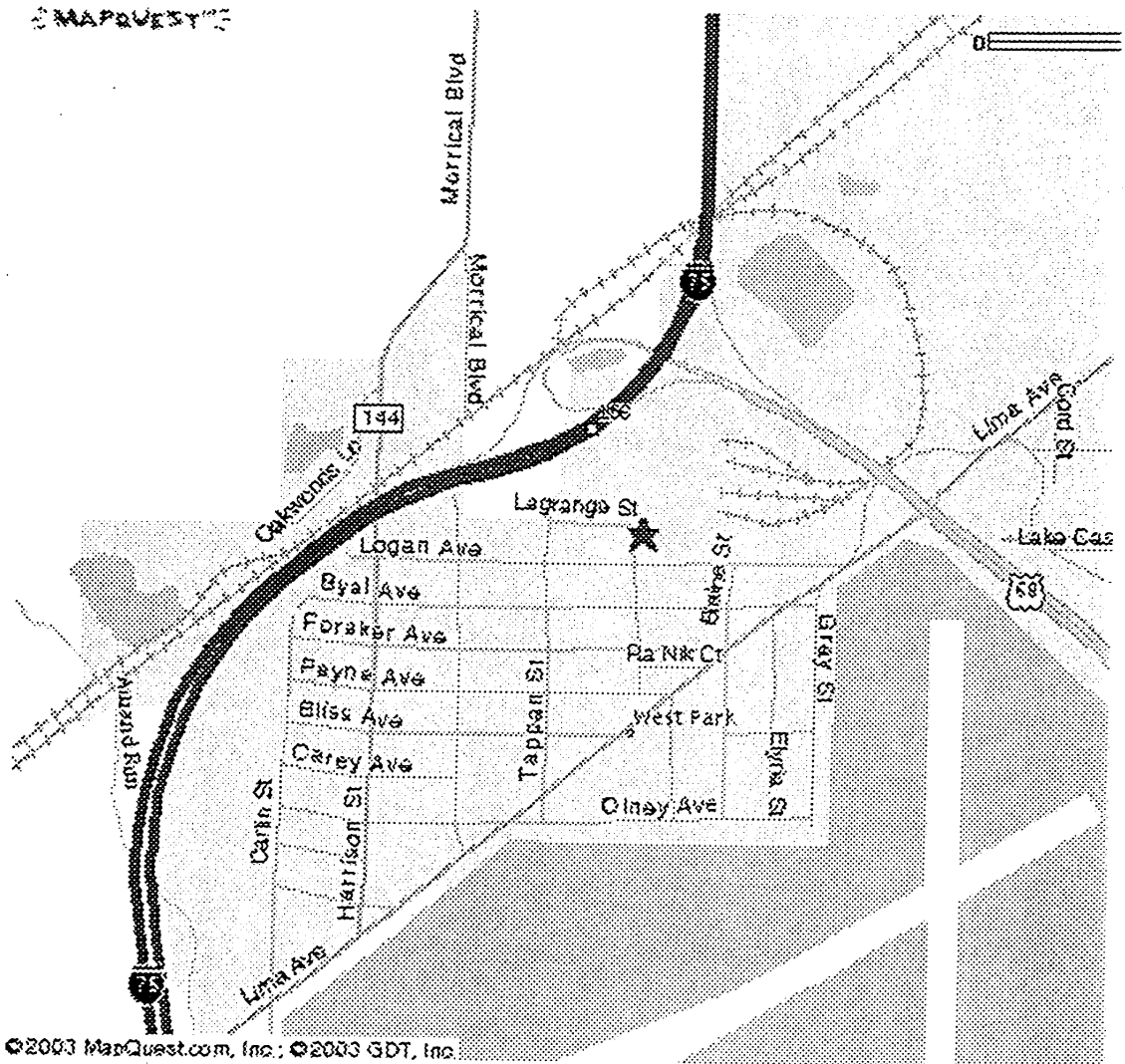
I certify that I this day have served a copy of the foregoing Petition for Declaratory Order of the Ohio Department of Transportation upon counsel for Norfolk Southern Railway Company, by mailing a copy by UPS Next Day Air to Roger L. Miller, Esq., Betts, Miller & Russo, 101 West Sandusky Street, Findlay, OH 45840.

Dated at Washington, DC, this 17th day of October 2003.


Fritz R. Kahn

ATTACHMENT 1

MAPQUEST



ATTACHMENT 2

IN THE COURT OF COMMON PLEAS
HANCOCK COUNTY, OHIO

Gordon Proctor, Director,
Ohio Department of Transportation,
1980 West Broad Street
P.O. Box 899
Columbus, Ohio 43216-0899

Plaintiff,

v.

Michigan Sugar Company
c/o CT Corporation System, Registered Agent
1300 East 9th Street
Cleveland, Ohio 44114

and

Norfolk Southern Railway Company
c/o CT Corporation System, Registered Agent
1300 East 9th Street
Cleveland, Ohio 44114

and

Jim Hickerson, individually and
d/b/a Jim Hickerson Excavating
816 Fox Street
Findlay, Ohio 45840

and

Pierce Hardy Limited Partnership
c/o CT Corporation System, Registered Agent
1300 East 9th Street
Cleveland, Ohio 44114

Case No. 2009 - CV-472

Judge Judge Niemeyer

COMPLAINT TO QUIET TITLE
AND FOR DECLARATORY
JUDGMENT

and :
:
Northern Ohio Sugar Company :
c/o CT Corporation System, Registered Agent :
925 Euclid Avenue :
Cleveland, Ohio 44115 :
:
Defendants. :

1. Plaintiff states that he is the Director of the Ohio Department of Transportation; that this action is brought in his official capacity; and that he is authorized and empowered by R.C. Title 55 to bring this action.

2. The real property that is the subject of this action is located in Hancock County, Ohio. Venue is proper in this Court.

3. Plaintiff plans to reconstruct the State Route 15/ U.S. Route 68 bridge over Lima Avenue, which also passes over a former rail spur. The bridge is located, and the reconstruction work will happen, within a perpetual easement and right-of-way known as Parcel No. 17-LA, which the State of Ohio has owned since 1956. The planned replacement bridge will not allow rail cars to pass beneath it. Plaintiff brings this action to quiet title under R.C. 5303.01 and for declaratory relief under R.C. Chapter 2721 because one or more of the defendants may claim a right to resume use of the rail spur or a right otherwise inconsistent with the planned project.

Background Facts

4. In 1937 Great Lakes Sugar Company, a Michigan corporation, owned a 106.873-acre tract in Hancock County. It granted an express easement over part of that tract, "for the purpose of constructing, operating, maintaining, repairing and renewing railroad tracks," to the New York, Chicago and St. Louis Railroad Company. This easement (the "1937 rail easement")

is recorded in Volume 198, Page 70 of the land records of Hancock County, Ohio. A true and accurate copy is attached as State's Exhibit A.

5. Parcel One of the 1937 rail easement included 2610.13 feet of existing industrial track leading into the Great Lakes Sugar Company's Findlay plant. Under the terms of the easement, the grantee had an obligation to maintain, repair, and renew this track.

6. The 1937 rail easement stated that it would endure "until such time as the Grantor permanently ceases and abandons operation of its plant at Findlay, Hancock County, Ohio, in which event the Grantee agrees that it will take up and remove its tracks then located on the property above described."

7. In 1955 Great Lakes Sugar Company, a Michigan corporation, deeded the 106.873-acre tract to defendant Northern Ohio Sugar Company, an Ohio corporation ("Northern Ohio Sugar"). This deed is recorded in Volume 252, Page 448 of the land records of Hancock County, Ohio.

8. In 1956 Northern Ohio Sugar agreed to sell a perpetual highway easement through the middle of its land to the State of Ohio. The agreement is recorded in Volume 261, Page 363 of the land records of Hancock County, Ohio. A true and accurate copy of the agreement is attached as State's Exhibit B.

9. Pursuant to the agreement, Northern Ohio Sugar granted a perpetual easement (the "1956 highway easement") known as Parcel No. 17 LA to the State of Ohio. The easement is recorded in Volume 261, Page 368 of the land records of Hancock County, Ohio. A true and accurate copy of the easement is attached as State's Exhibit C.

10. From then until now, the State continuously has been in physical possession of

Parcel No. 17 LA, which it has used and now is using for public highway purposes.

11. In 1964, the New York, Chicago and St. Louis Railroad Company became consolidated into the Norfolk and Western Railway Company.

12. In 1985, Northern Ohio Sugar deeded a 37.765-acre tract south of State Route 15/ U.S. Route 68, including its Findlay plant, to Great Lakes Sugar Company, an Ohio corporation. The deed is recorded in Volume 479, Page 372 of the land records of Hancock County, Ohio. A true and accurate copy of the deed is attached as State's Exhibit D.

13. This 37.765-acre tract did not include any part of the fee estate that is burdened by the 1956 highway easement.

14. In 1986, Northern Ohio Sugar deeded a 51.345-acre tract north of State Route 15/ U.S. Route 68 to H&O Trucking, an Ohio corporation. The deed is recorded in Volume 511, Page 731 of the land records of Hancock County, Ohio. A true and accurate copy of the deed is attached as State's Exhibit E.

15. This 51.345-acre tract did not include any part of the fee estate that is burdened by the 1956 highway easement. The tract lies between the main line of the railroad and the Findlay sugar plant, but Northern Ohio Sugar deeded the property without reserving any rail easement rights to itself.

16. Upon information and belief, Northern Ohio Sugar ceased using rail service to its Findlay plant in or before 1986, and no rail service has been provided to the plant since then.

17. Northern Ohio Sugar filed a continued existence letter with the Ohio Secretary of State in 1993. In 1997, its statutory agent resigned and was not replaced. In 1998, its Ohio articles of incorporation were cancelled.

18. Defendant Michigan Sugar Company, a Michigan corporation, is the successor by merger to Great Lakes Sugar Company, an Ohio corporation, and is the owner of the 37.765-acre tract south of State Route 15/ U.S. Route 68.

19. The 51.345-acre tract north of State Route 15/ U.S. Route 68 has been split. The current owners are defendant Jim Hickerson Excavating, a sole proprietorship, which holds title by deed recorded at Volume 1318, Page 115; and defendant Pierce Hardy Limited Partnership, a Pennsylvania limited partnership doing business as 84 Lumber, which holds title by deed recorded at Volume 1727, Page 57.

20. Defendant Norfolk Southern Railway Company is the successor by merger to the Norfolk and Western Railway Company.

21. Upon information and belief, 84 Lumber paid to have the rail spur restored between the Norfolk Southern main line and a loading dock 84 Lumber built to serve its facility.

22. Past the loading dock, the rail spur is unusable. Many of the rails have been removed, many of the cross-ties have rotted, trees have grown up to obstruct passage, and some of the rail bed has washed out. An asphalt drive leading into the 84 Lumber facility has been laid directly atop the rails and an 84 Lumber sign has been erected over the rails.

First Claim for Relief

23. Paragraphs 1-22 are incorporated herein by reference as if fully restated.

24. The 1937 rail easement terminated in accordance with its express terms in 1955 when the Grantor, Great Lakes Sugar Company, a Michigan corporation, deeded its Findlay property to Northern Ohio Sugar Company and thereupon permanently ceased to operate its Findlay plant.

25. In the alternative, the rail easement terminated upon completion of its purpose when the Findlay sugar plant ceased to use rail service and Northern Ohio Sugar deeded away property between its plant and the main railroad line without reserving to itself any rail easement rights.

26. In the alternative, the rail easement terminated because the railroad abandoned it or because the railroad ceased to maintain the rail spur.

WHEREFORE, plaintiff demands that this Court declare the 1937 rail easement terminated within the land encumbered by plaintiff's highway easement; issue an order quieting the highway easement against any claims by defendant Norfolk Southern Railway Company; award costs herein; and grant all other relief as may be proper.

Second Claim for Relief

27. Paragraphs 1-26 are incorporated herein by reference as if fully restated.

28. The property description in the deed under which defendant Michigan Sugar Company claims title specifically describes as boundaries the southeasterly limited access right of way line of Interstate Route 75 and the southwesterly limited access right of way line of State Route 15 and 68 as well as monuments, calls, and distances along those right of way lines. As a result, defendant Michigan Sugar Company does not own the fee of any of the land encumbered by the 1956 highway easement.

WHEREFORE, plaintiff demands that this Court declare that the deed recorded at Volume 479, Page 372 of the land records of Hancock County did not convey the fee estate of the land encumbered by plaintiff's highway easement recorded at Volume 261, Page 368 of the land records of Hancock County; issue an order quieting plaintiff's easement against any claims

by defendant Michigan Sugar Company; award costs herein; and grant all other relief as may be proper.

Third Claim for Relief

29. Paragraphs 1-28 are incorporated herein by reference as if fully restated.

30. Northern Ohio Sugar excepted from the grant in the 1956 highway easement rights for the exclusive use of a utility tunnel, lands on which trackage of the New York, Chicago and St. Louis Railroad Company was located, lands on which a service road or roads were located, and lands reasonably required for the construction, maintenance, and operation of the trackage and service road(s).

31. Defendant Michigan Sugar Company does not own the land encumbered by the 1956 highway easement and does not have an easement for rail service across the Hickerson Excavating and 84 Lumber properties.

WHEREFORE, plaintiff demands that this Court declare the exceptions to the 1956 easement to be of no force and effect; declare that the 1956 highway easement allows plaintiff to replace the bridge over Lima Avenue without regard to any such exceptions or any potential resumption of use of the former rail spur; issue an order quieting plaintiff's easement against any claims by defendant Michigan Sugar Company; award costs herein; and grant all other relief as may be proper.

Fourth Claim for Relief

32. Paragraphs 1-31 are incorporated herein by reference as if fully restated.

33. The 1956 agreement between Northern Ohio Sugar and the State required the State to build and maintain a utility tunnel and "a certain railroad overpass or grade separation"

of agreed-upon design and location "for the use and benefit of Owner, its successors and assigns, to accommodate relocated existing tracks plus an additional track and service road."

34. The State built these structures and has maintained the bridge since its construction.

35. The 1956 agreement provides that the State's maintenance obligation is "limited to structural maintenance" but would "continue so long as the use of any or all of said structures and/or items is deemed necessary by the Owner, its successors or assigns."

36. Any contractual obligation that imposes a financial obligation on the State must (a) obligate the State only for the duration of the biennium in which the contract is executed; (b) specify a maximum dollar amount for which the State is obligated; and (c) the specified amount must be appropriated and certified as available for payment before the contract is executed. If these requirements are not met, the contract is invalid and unenforceable under Ohio Const. art. 2, § 22; Ohio Const. art. VIII, §§ 1-3; R.C. 126.07; and R.C. 131.33.

37. The financial obligations in the 1956 agreement are not limited to the biennium in which the contract was executed and do not specify a maximum dollar amount for which the State is obligated.

WHEREFORE, plaintiff demands that this Court declare void each provision of the 1956 agreement that purports to impose a financial obligation of unspecified amount on the State; declare that the State has fully performed all other obligations under the agreement; declare that defendants Michigan Sugar Company and Norfolk Southern Railway Company have no rights against the State under the 1956 agreement; award costs herein; and grant all other relief as may be proper.

Fifth Claim for Relief

38. Paragraphs 1-37 are incorporated herein by reference as if fully restated.

39. The 1985 deed from Northern Ohio Sugar to Michigan Sugar Company's predecessor in title did not include the land burdened by the 1956 highway easement.

40. The 1986 deed from Northern Ohio Sugar to the predecessors in title to Jim Hickerson Excavating and Pierce Hardy Limited Partnership did not include the land burdened by the 1956 highway easement.

41. When upgrading existing highways that are built on perpetual highway easements, plaintiff commonly acquires fee title to the burdened lands. To do so as part of the planned bridge replacement project, however, plaintiff needs a judicial determination of the ownership of the land burdened by the 1956 highway easement.

42. Northern Ohio Sugar apparently owns the fee estate burdened by the 1956 highway easement, but it owns no property that would benefit by the exceptions to the 1956 highway easement or the 1956 agreement between it and the State.

WHEREFORE, plaintiff demands that this Court declare defendant Northern Ohio Sugar Company to be the owner of the fee estate of the land encumbered by plaintiff's highway easement recorded at Volume 261, Page 368 of the land records of Hancock County; declare that defendant Northern Ohio Sugar Company has no rights enforceable against the State under the 1956 highway easement or the 1956 agreement except the reversionary interest in the State's perpetual highway easement; issue an order quieting plaintiff's easement against any claims by defendant Northern Ohio Sugar Company except the reversionary interest in the State's perpetual highway easement; award costs herein; and grant all other relief as may be proper.

BETTY D. MONTGOMERY
Attorney General of Ohio



MICHAEL L. STOKES (0064792)
Assistant Attorney General
One SeaGate, Suite 2150
Toledo, OH 43604-1551
E-mail: mstokes@ag.state.oh.us
(419) 245-2550 - FAX (419) 245-2520
Attorney for Plaintiff

Vol 198 Pg 70

See Vol - 140 P.P. 563 of Deeds.

Ralph C. Lovering

Sworn to before me and subscribed in my presence this 14th day of July, 1937.

My Commission Expires Jan'y 1st 1938

Jos. Hodgson
Justice of the Peace

Transferred July 14, 1937. F. H. Huffman, Auditor, by W. C. Foster, Deputy.

Filed for Record July 14, 1937 at 4:08 o'clock P. M.

Recorded July 17, 1937, Russell W. Barnhill, Recorder.

Fee 50¢ Paid.

-2179-

GRANT OF EASEMENT

Great Lakes Sugar Company
TO
The New York, Chicago and
St. Louis Railroad Company

KNOW ALL MEN BY THESE PRESENTS, That the GREAT LAKES SUGAR COMPANY, a corporation existing under and by virtue of the laws of the State of Michigan, the GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, received to its full satisfaction from THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, Terminal Tower, Cleveland, Ohio, the GRANTEE, does hereby grant unto said Grantee, its successors and assigns, an easement for the purpose of constructing, operating, maintaining, repairing and renewing railroad tracks over, across and upon the two parcels of land described as follows:

Situated in the East Half of the Southeast Quarter of Section 23 and in the West Half of the Southwest quarter of Section 24, in Township One North, Range Ten East, Hancock County, Ohio:

PARCEL ONE:

Being a strip of land approximately twenty-six hundred ten and thirteen hundredths feet (2610.13) in length by twenty feet (20') in width, being ten feet (10') on each side of the following described center line of an existing industrial track leading into the plant of the Great Lakes Sugar Company near Findlay, Ohio:

Beginning at a point on the southeasterly right of way line of The New York, Chicago and St. Louis Railroad Company, said right of way line being parallel to and distant fifty feet (50') southeasterly measured at right angles from the center line of the main track of said Railroad Company, said point being one hundred forty-seven and sixty-four one-hundredths feet (147.64') measured southwesterly along said right of way line from the point at which it is intersected by the north line of the Southeast Quarter of said Section 23;

thence eastwardly along a curved line with a radius of six hundred three and eighty one-hundredths feet (603.80') and deflecting toward the right - a tangent to said curved line at the point of beginning forming an interior angle of 22°-42'-45" with said right of way line - a distance of sixty-five and sixty-six one-hundredths feet (65.66') to a point of compound curve;

thence continuing eastwardly along a curved line with a radius of eight hundred thirty-five and fifty-two one-hundredths feet (835.52') and deflecting toward the right a distance of three hundred forty-eight and seventy one-hundredths feet (348.70') to a second point of compound curve;

HODGSON, N. J.

STATE'S
EXHIBIT

A

thence southeastwardly along a curved line with a radius of six hundred eighty-one and forty-two one-hundredths feet (681.42') and deflecting toward the right a distance of three hundred thirty-six and eleven one-hundredths feet (336.11') to a point on the east line of said Section 23, said point being located on said east line at a distance of two hundred twenty-eight and ninety-eight one-hundredths feet (228.98') measured south along said east line from the northeast corner of said Southeast Quarter of Section 23, a tangent to the curve at said point forming an interior angle of $49^{\circ}-14'-38''$ with said east line;

thence continuing southwardly along said last mentioned curved line a distance of one hundred eight and sixty-four one-hundredths feet (108.64') to a point of tangent;

thence southerly along a straight line tangent to said last described curved line a distance of five hundred twenty-two and fifty-five one-hundredths feet (522.55') to a point of curve;

thence continuing southerly along a curved line with a radius of nine hundred fifty-five and thirty-seven one-hundredths feet (955.37') and deflecting toward the right a distance of five hundred eighty-three and thirty-three one-hundredths feet (583.33') to a point of compound curve;

thence continuing southerly along a curved line with a radius of one thousand nine hundred ten and eight one-hundredths feet (1,910.08') and deflecting toward the right a distance of two hundred fifty and no one-hundredths feet (250.00') to a point of compound curve;

thence southwesterly along a curved line with a radius of five hundred nine and twenty one-hundredths feet (509.20') and deflecting toward the right a distance of three hundred ninety-five and fourteen one-hundredths feet (395.14') to a point of tangent which is at the end of said strip of land.

PARCEL TWO:

Beginning at a point which is the southwesterly corner of Parcel One above described:

thence southwestwardly along a straight line parallel to and distant ten feet (10') from the center line of said industrial track a distance of five hundred sixty-five and one one-hundredth feet (565.01') to a point of curve;

thence continuing southwestwardly along a curved line with a radius of five hundred eighty-three and sixty-nine one-hundredths feet (583.69') deflecting toward the right and parallel to and distant ten feet (10') from the center line of said industrial track a distance of ninety-five and eighty-one one-hundredths feet (95.81') to a point on the east line of said Section 23, said point being located at a distance of three hundred forty-six and ninety one-hundredths feet (346.90'), more or less, measured northerly from the southeast corner of said Section 23, a tangent to said curve at said point forming an interior angle of $56^{\circ}-20'-30''$ with said section line;

thence continuing southwestwardly along said last described curved line parallel to and distant ten feet (10') from the center line of said industrial track a distance of three hundred thirty-five and ninety-six one-hundredths feet (335.96') to a point;

thence north along a line parallel to said easterly line of Section 23 a distance of four hundred forty and forty one-hundredths feet (440.40'), more or less, to a point which is ten feet (10') northerly, measured at right angles, from the center line of the northerly industrial track leading into the plant of said Great Lakes Sugar Company;

thence easterly along a curved line with a radius of seven hundred six and seventy-eight one-hundredths feet (706.78') deflecting toward the right and parallel to and distant ten feet (10') from the center line of said northerly industrial track, a distance of one hundred

thirty and no one-hundredths feet (130.00') to a point of tangent;

thence continuing eastwardly along a straight line tangent to said last described curved line and parallel to and distant ten feet (10') northerly from the center line of said northerly industrial track a distance of one hundred ninety-one and ninety one-hundredths feet (191.90'), more or less, to a point on said easterly line of said Section 23, which point is located at a distance of six hundred thirty-nine and ten one-hundredths feet (639.10'), more or less, north of the southeast corner of said Section, said straight line forming an interior angle of $83^{\circ}-35'-30''$ with said section line;

thence continuing easterly along said last described straight line a distance of fifty-five and forty one-hundredths feet (55.40') to a point of curve;

thence continuing easterly along a curved line with a radius of two hundred sixty-three and eighty one-hundredths feet (263.80') deflecting toward the left and parallel to and distant ten feet (10') northerly from the center line of said northerly industrial track a distance of sixty-three and ninety one-hundredths feet (63.90') to a point of compound curve;

thence continuing northeasterly along a curved line with a radius of six hundred fifty-four and twenty-nine one-hundredths feet (654.29') deflecting toward the left and parallel to and distant ten feet (10') northerly from the center line of said northerly industrial track a distance of three hundred twelve and ten one-hundredths feet (312.10') to a point of compound curve;

thence continuing northeasterly along a curved line with a radius of five hundred sixty-two and sixty one-hundredths feet (562.60') deflecting toward the left and parallel to and distant ten feet (10') northerly from the center line of said northerly industrial track a distance of eighty and forty-five one-hundredths feet (80.45') to a point of curve;

thence continuing northeasterly along a straight line tangent to said last described curved line and distant ten feet (10') northerly from the center line of said northerly industrial track a distance of twelve and forty one-hundredths feet (12.40') to a point of curve;

thence southeasterly along a line forming an angle of 90° with the last described tangent line a distance of twenty feet (20') to the point of beginning.

The two parcels above described have a total area of five and eighty-six one-hundredths acres (5.86), more or less, of which three and ten one-hundredths acres (3.10), more or less, are located in Section 23 and two and seventy-six one-hundredths acres (2.76), more or less, in Section 24. The area of Parcel One is approximately one and twenty one-hundredths acres (1.20) and the area of Parcel Two is approximately four and sixty-six one-hundredths acres (4.66).

The Grantee, by the acceptance of this easement, agrees that the Grantor shall have the right to use any portion of Parcel Two, hereinabove described, not used by the Grantee in connection with constructing, operating, maintaining, repairing and renewing said railroad tracks thereon, provided, however, that the Grantor agrees to make no use of any portion of said Parcel Two closer than ten (10) feet from the nearest rail of any track or tracks now located thereon.

The Grantee agrees that it will not store its cars, or cars of parties other than the Grantor, on the tracks constructed, operated, maintained, repaired and renewed upon the premises hereinabove described so as to unreasonably interfere with the placement of cars on said tracks for the Grantor at its plant at Findlay, Ohio. The Grantor agrees to execute the usual side track agreement with the Grantee relative to the use of the tracks above described which connect with tracks owned by the Grantor and located on property of the

Grantor other than property hereinabove described.

TO HAVE AND TO HOLD the above described easement unto the Grantee, its successors and assigns, until such time as the Grantor permanently ceases and abandons operation of its plant at Findlay, Hancock County, Ohio, in which event the Grantee agrees that it will take up and remove its tracks then located on the property above described. And the Grantor does, for itself and its successors and assigns, covenant with the said Grantee, its successors and assigns, that at and until the ensueing of these presents, it is well seized of the above described premises, as a good and indefensible estate in FEE SIMPLE, and has good right to bargain and sell the same in manner and form as above written, and that the same are free from all encumbrances whatsoever, and that it will WARRANT AND DEFEND said premises, with the appurtenances thereunto belonging, to the said Grantee, its successors and assigns, against all lawful claims and demands whatsoever.

IN WITNESS WHEREOF, said Great Lakes Sugar Company has caused its corporate name and seal to be hereunto signed and affixed by its duly authorized officers, this 14th day of June, A.D. 1937.

Signed, Sealed and Acknowledged in the presence of:

C. E. Olson

Josephine Kelley

Great Lakes Sugar Company
Blissfield, Michigan, SEAL

STATE OF Michigan } ss.
COUNTY OF Wayne }

GREAT LAKES SUGAR COMPANY
By J. E. Larrance President
And Searle Kowat Secretary

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named J. E. Larrance, President, and Searle Kowat, Secretary, respectively, of said Great Lakes Sugar Company, who acknowledged that they did sign and seal the foregoing instrument for and on behalf of said corporation, being thereunto duly authorized, and that the same is the free act and deed of said corporation and of themselves as such officers respectively.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Detroit, this 14 day of June, A.D. 1937.

Ira E. Van Emster
Notary Public (SEAL)
Wayne County, Michigan

Ira E. Van Emster
Notary Public
My Commission Expires Sept. 27, 1940

Filed for Record July 15, 1937, at 9:06 o'clock A. M.

Recorded July 17 1937, Russell W. Barnhill, Recorder.

Fee \$3.15 Paid. y

2160-
CLARENCE G. &
STELLA E. KNIGHT
TO THE
HANCOCK COUNTY ROAD

R/W Form 1
Title
Revised 6-1-29-D

R/W Form 3
Both sides
Adopted 10-15-26
Revised 7-1-27-B

Sheet 1 of 4 Sheets.

Sheet 2 of 4 sheets.

EASEMENT FOR HIGHWAY PURPOSES

KNOW ALL MEN BY THESE PRESENTS:

That Clarence G. and Stella E. Knight, the Grantor, for and in consideration of the sum of Fifteen Dollars (\$15.00) and for other good and valuable considerations to ___ paid by Hancock County the Grantee, the receipt whereof is hereby acknowledged,

AGREEMENT

It is agreed this 16th day of August, 1956, by and between The Department of Highways of the State of Ohio, hereinafter called "Highway Department," and Northern Ohio Sugar Company, an Ohio corporation, hereinafter called "Owner," that:

1. On or before thirty (30) days after the date of this agreement, Highway Department shall pay Owner the sum of Thirteen Thousand Five Hundred Fifty Dollars (\$13,550.00) for easement for highway purposes. Said easement shall be in the form and language of "Easement for Highway Purposes" as hereto attached, marked "Exhibit A" and made a part of this agreement, the original of which shall be executed by the Owner simultaneously with the signing of this agreement.

2. On or before thirty (30) days after the date of this agreement, Highway Department shall pay Owner the sum of Two Hundred Forty-three Thousand Four Hundred Ten Dollars (\$243,410.00) for damages accruing from the taking of the lands described in said easement for highway purposes identified as Exhibit A.

3. In addition to said payments, the Highway Department shall at its expense:

(a) Construct and maintain a certain utility tunnel for the use and benefit of Owner, its successors or assigns. Said utility tunnel shall be located at Station 770+00, as said station is now shown on the plans prepared by and on file with the Highway Department, and the construction of said tunnel shall be fully completed on or before the 16th day of August,

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1956. Said utility tunnel shall be six (6) feet wide by seven (7) feet high (inside measurements) and of sufficient length to cross under proposed U. S. Highway 68 By-pass. Said utility tunnel shall be constructed of reinforced concrete, including reinforced concrete floor or bottom, all in compliance with standards and specifications acceptable to and approved by the Highway Department, and shall include cast-in-place attachments for hangers or supports as prescribed and specified by the Owner. The floor or bottom of said utility tunnel shall be four (4) to six (6) inches above finished ground level at the south end, sloping to the north, with a minimum drop of six (6) inches. Highway Department agrees that the Owner shall have unrestricted use of said utility tunnel on or before the 16th day of August, 1956, including areas adjacent thereto which may be necessary to provide access to and from the remaining lands of the Owner.

STATE'S
EXHIBIT
B

(b) Construct and maintain a certain railroad overpass or grade separation for the use and benefit of Owner, its successors or assigns, to accommodate relocated existing tracks plus an additional track and service road as shown on plans of N. Y. C. & St. L. R.R., identified as dated at Cleveland, Ohio, June 1, 1956, File No. 1060.1 with legend thereon "Rearrangement of tracks serving The Northern Ohio Sugar Co. account of proposed new U. S. Highway Route #68," and now on file with the Highway Department. Copy of said plan is hereto attached, marked "Exhibit B" and made a part hereof. Said overpass shall be constructed as shown on H. W. Lochner and Company, Consulting Engineers, Revised Site Plan dated August 28, 1956, No. 7054, which revised site plan is now on file with the Highway Department and designated as "Bridge No. HAN-68-1442, U. S. 68 over relocated

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U. S. 25 and N. Y. C. & St. L. R.R. spur track." Copy of said plan is hereto attached, marked "Exhibit C" and made a part hereof.

(c) Construct ~~the~~^{70.0} fence gates, and two ~~driveway approaches as shown on Sheets No. 36 and 37 of plans~~^{Highway Dept. 254 No 170 and} prepared by H. W. Lochner and Company, Consulting Engineers, revised under date of ~~August 28, 1936~~^{Highway Dept. 254 No 170 and}, and now

on file with the Highway Department. Said Sheets No. 36 and 37, are identified as ~~Massachusetts~~ ^{U.S. 170 and 36/71} Township, Hancock County, T 1 S, R 10 E, Hancock County, HAN-68-1187 and are further identified as "STA 74900 to 76400, U. S. Route 25 Interchange." A copy of said Sheets No. 36 and 37, is hereto attached, marked "Exhibit D" and made a part hereof.

(d) Construct and maintain surface drainage facilities for the use and benefit of Owner, its successors or assigns of such design and extent as will prevent the pooling of any surface water on or adjacent to the lands of the Owner and be adequate to accommodate run-off of all surface waters therefrom ~~not to existing outlet at North boundary of Owners' property~~. Said drainage system and/or facilities shall be built to drain the property of the Owner following the natural slope of said land and shall be constructed in compliance with standards and specifications acceptable to and approved by the Highway Department, so as to accomplish the objectives specified above in this Item 3(d).

(c) Provide or pay the New York, Chicago and St. Louis Railroad Company for such changes and/or alterations as may be necessary to change and/or relocate the existing railroad trackage of the New York, Chicago and St. Louis Railroad Company through and under the railroad overpass or grade separation to be built by the Highway Department as required by

the provisions of the foregoing Item 3(b). Such changes and/or alterations shall be accomplished with rail curves limited to the maximum of eighteen degrees (18°) and without increase in present track grade, all to be done in accordance with said plan prepared by the New York, Chicago and St. Louis Railroad Company marked Exhibit B, and made a part hereof, and specifications to be prepared by said Railroad Company and approved by the Owner. Said changes and/or alterations in said trackage shall not be made during the period when Owner's factory at Findlay, Ohio is engaged in the processing of sugar beets.

(c) Provide rail crossings under and near the railroad overpass or grade separation, mentioned in foregoing Item 3(b) which may be required over the trackage relocated in accordance with foregoing Item 3(e), or pay said New York, Chicago and St. Louis Railroad Company for the construction of same.

(g) Provide paved service road under the railroad overpass or grade separation mentioned in foregoing Item 3(b), or pay Owner for the construction of same.

(h) Indemnify and hold Owner harmless from and against any and all loss, costs, damages and expenses sustained by the Owner as the result of any stoppage, interference with or interruption of the factory operations, facilities or processes of Owner arising in whole or in part from any act or omission of the Highway Department, its agents, representatives and/or contractors during the course of the construction and until U. S. Highway 68-25 Findlay By-pass projects have been completed and finally accepted by the State of Ohio.

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For the purpose of this agreement, it is agreed that the word "maintain" shall be limited to structural maintenance and that the obligations of the Highway Department to maintain various structures and/or items as in this agreement provided, shall continue so long as the use of any or all of said structures and/or items is deemed necessary by the Owner, its successors or assigns.

4. Owner agrees that:

(a) It will not locate any spray pond within seven hundred (700) feet of the northeasterly line of the property described in Exhibit A hereto attached and made a part hereof.

(b) So long as said relocated U. S. Route 25, is a limited access highway, Owner will furnish flagmen for traffic control on said relocated U. S. Route 25, when Owner is making continuous vehicular use of the approaches from Owner's property.

(Remainder of Highway Dept. shall be con-

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5. It is further mutually understood and agreed that:

(a) Highway Department shall obtain approval of the Public Utilities Commission of the State of Ohio for benefit of Owner and the New York, Chicago and St. Louis Railroad Company to operate trains, railroad cars and engines under the railroad overpass or grade separation mentioned in foregoing Item 3(b).

(b) The easement for highway purposes, hereinbefore identified as Exhibit A, shall be less and except the perpetual rights and easements reserved to the Owner, its successors or assigns, as set forth in said Exhibit A, and shall be subject to exceptions, reservations, easements and rights of way as presently existing or of record.

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6. It is further mutually understood and agreed that the Owner has not, by the execution of this agreement or by the execution of the easement for highway purposes, herein identified as Exhibit A, waived its right to claim damages arising from, incident to or in any way connected with any abandonment or vacation of all or any part of U. S. 68-25 By-pass, if constructed as now contemplated by the Highway Department and thereafter abandoned or vacated, or waived its right to damages resulting from the breach in whole or in part of this agreement by the Highway Department. It is further mutually understood and agreed that the Owner has not and does not waive any right whatsoever to seek damages sustained by it from any act or omission of the Highway Department, its agents, representatives and/or contractors after U. S. 68-25 Findlay By-pass projects have been completed and finally accepted by the State of Ohio.

7. It is further mutually understood and agreed that Northern Ohio Sugar Company, also referred to herein as Owner, shall and does mean Northern Ohio Sugar Company, its successors and assigns.

IN WITNESS WHEREOF, Northern Ohio Sugar Company and The Department of Highways of the State of Ohio have executed triplicate copies of this agreement at the places and on the dates indicated.

Colorado, this 16th day

of August, 1956, by Frank A. Kemp, President of Northern Ohio Sugar Company.

In the Presence of:

NORTHERN OHIO SUGAR COMPANY

W. P. White
A. M. Courtney

By Frank A. Kemp
Frank A. Kemp, President



Signed and dated at Columbus, Ohio, this 28th day of August, 1956, by Samuel O. Linzell on behalf of The Department of Highways of the State of Ohio.

In the Presence of:

THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF OHIO

Harold L. ...
[Signature]

By Samuel O. Linzell
Samuel O. Linzell, Director

STATE OF COLORADO }
CITY AND COUNTY OF DENVER } ss.

Before me, a Notary Public in and for said City and County of Denver, State of Colorado, personally came Frank A. Kemp, President of Northern Ohio Sugar Company, who acknowledged that he did sign the foregoing agreement for and on behalf of Northern Ohio Sugar Company, and acknowledged the execution of said instrument to be his free act and deed and the free act and deed of Northern Ohio Sugar Company.



[Signature]
Notary Public

THE STATE OF OHIO }
COUNTY OF FRANKLIN } ss.

Before me, a Notary Public in and for said County and

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State, personally came Samuel O. Linzell, Director of The Department of Highways of the State of Ohio, who acknowledged that he did sign the foregoing agreement for and on behalf of The Department of Highways of the State of Ohio, and acknowledged execution of said instrument to be his free act and deed and the free act and deed of The Department of Highways of the State of Ohio.



Esther L. Meyer
Notary Public

ESTHER L. MEYER
Notary Public, Franklin County, Ohio
My Commission Expires Sept. 16, 1957

Exhibit "A" N.O.S. & S.O. Highway Dept. by J.B.

EASEMENT FOR HIGHWAY PURPOSES

KNOW ALL MEN BY THESE PRESENTS:

That Northern Ohio Sugar Company, an Ohio corporation, the Grantor, for and in consideration of the sum of Two Hundred Fifty-six Thousand Nine Hundred Sixty Dollars (\$256,960.00) to be paid by the State of Ohio, the Grantee, does hereby grant, bargain, sell, convey and release to the said Grantee, its successors and assigns forever, a perpetual easement and right of way for public highway and road purposes, in, upon and over the lands hereinafter described, situated in the SE $\frac{1}{4}$ of Section 23, and the SW $\frac{1}{4}$ of Section 24, Township 1 North, Range 10 East, Liberty Township, Hancock County, Ohio, and bounded and described as follows: *Parcel No. 17 LA N.O.S. & S.O. Highway Dept. by J.B.*

Beginning at an iron pin in the northwest corner of the land owned by said Grantor, and in the south right of way line of the New York, Chicago and St. Louis Railroad Company; thence north 50°35' east along the south right of way line of said railroad a distance of 681.93 feet to a point; thence south 4°05' east 177.85 feet to a point; thence south 0°50' east 388.73 feet to a point; thence southeasterly on a curve bearing left and having a radius of 1040.92 feet and having a long chord which bears south 25°34'15" east, 599.82 feet a distance of 608.32 feet to a point; thence south 49°30' east a distance of 368.51 feet to a point; thence south 52°53' east a distance of 740.96 feet to a point; thence north 47°57' east a distance of 151.45 feet to a point; thence northeasterly on a curve bearing right and having a radius of 726.62 feet and the long chord of which curve bears north 37°32' east 198.54 feet a distance of 199.17 feet to a point in the east property line of said Grantor and west corporate line of the City of Findlay; thence south 0°55' west along the east property line of said Grantor 153.47 feet to an iron pin in the southeast corner of land owned by said Grantor; thence north 89°05' west a distance of 219.8 feet along the south property line to an iron pin; thence south 0°49' west along the east property line of said Grantor a distance of 566.6 feet to an iron pin in the existing northwest right of way

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line of Lima Avenue; said line crosses the centerline of State Route 68 (Findlay By-pass) at Station 759+66.99; thence south 51°38' west along the northwesterly right of way of Lima Avenue a distance of 105.73 feet to an iron pin; thence north 89°40' west along the south property line of said Grantor 255.38 feet to a point; thence north 5°05' west a distance of 176.07 feet to a point; thence northerly along a curve bearing right and having a radius of 504.41 feet and a long chord which bears north 6°6'30" east 195.84 feet, a distance of 197.10 feet to a point; thence north 72°41'00" west a distance of 32.69 feet to a point; thence north 47°57' east a distance of 147.05 feet to a point; thence north 51°31' west a distance of 24.50 feet to a point; thence north 55°05' west a distance of 584.86 feet to a point; thence northwesterly on a curve bearing left and having a radius of 3200 feet and a long chord which bears north 64°14' west, 195.20 feet a distance of 195.23 feet to a point; thence north 66°49' west a distance of 247.30 feet to a point; thence westerly on a curve bearing left and having a radius of 600 feet and a long chord which bears north 85°40' west, 349.11 feet a distance of 352.60 feet to a point; thence south 62°23' west a distance of 235.29 feet to a point in the west property line of said Grantor; thence north 0°59' east a distance of 1017.31 feet along said west property line to the point of beginning, containing 27.76 acres, more or less.

Less and except therefrom perpetual easements and rights
of way:

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1. For the exclusive use of existent utility tunnel located at Station 770+00 as shown on plans prepared by and on file with The Department of Highways of the State of Ohio, (hereinafter called "Highway Department"), together with all lands reasonably required for access to and from said utility tunnel and adjacent lands of the Grantor.

2. For the exclusive use of all lands on which trackage of the New York, Chicago and St. Louis Railroad Company is now located or shall be relocated or constructed as shown on plans of N. Y. C. & St. L. R.R., dated at Cleveland, Ohio, June 1, 1956, File No. 1060.1, together with all lands reasonably required for the construction, maintenance and operation of said trackage.

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3. For the exclusive use of all lands on which service road or roads are to be located as shown on said plans of N. Y. C. & St. L. R.R., dated at Cleveland, Ohio, June 1, 1956, File No. 1060.1, together with all lands reasonably required for the construction, maintenance and repair of said service roads, and for the operation of vehicular traffic thereon.

4. To use, operate, maintain, repair, replace and/or reconstruct existent twelve (12) inch sewer line as located at and running north and south along the west boundary of the Grantor's property, which said sewer line was first constructed by permission granted to the Northern Ohio Sugar Company from S. O. Linzell, Director of Highways, by Walter J. Neidhardt, Division Engineer, Lima, Ohio, under date of March 2, 1956.

All of which said exceptions are reserved from the foregoing grant unto the Northern Ohio Sugar Company, its successors or assigns forever.

The foregoing grant is subject to exceptions, reservations, easements and rights of way as presently existing or of record.

This easement for highway purposes is executed in pursuance to the terms of an agreement between The Department of Highways of the State of Ohio and Northern Ohio Sugar Company, dated the 16th day of August, 1956.

Northern Ohio Sugar Company, for itself, its successors and assigns, does hereby specifically waive and release any and all right or rights of direct access, or claims thereof, to the highway improvement, known as relocated U. S. Route 68-25, to be constructed as called for by said plans prepared by and on file with said Highway Department, except for use of two (2) driveway approaches from Grantor's property onto relocated U. S. Route 25.

examined
Highway Dept. H.A.

- 3 -

370

(Lima Avenue) as shown on Sheets No. 36 and 37 of plans prepared by H. W. Lochner and Company, Consulting Engineers, revised under date of August 28, 1956, ^{filed in Department of Highway} and now on file with the Highway Department, (the perpetual right to use said two (2) driveway approaches being hereby reserved unto the Grantor, its successors or assigns) and the execution of this conveyance shall act automatically as a waiver to the State of Ohio in the elimination of any direct access to said highway either for present or future consideration, except as hereinbefore specifically provided. Said Sheets No. 36 and 37 are identified as ^{being in 25th} ~~being in 25th~~ Township, Hancock County, T 1 S, R 10 E, Hancock County, HAN-68-1147" and are further identified as "STA 749+00 to 764+00, U. S. Route 25 Interchange."

It is further understood and agreed that the considerations, including the cash payment above recited and the promises and commitments of the State of Ohio in addition to the limitation of access as provided above, include compensation for land taken and all damages accruing from the taking of said land.

To have and to hold said easement and right of way for public highway and road purposes unto the Grantee, its successors and assigns forever, subject to the terms and conditions hereinbefore set forth.

And the said Grantor, for itself and its successors and assigns, hereby covenants with the said Grantee, its successors and assigns, that it is the true and lawful owner of said premises, and is lawfully seized of the same in fee simple, and has good right and full power to grant, bargain, sell, convey and release the same in manner aforesaid, and that the same are free and clear from all liens and encumbrances whatsoever except the perpetual rights and easements herein reserved unto the Grantor, its successors or assigns, and except exceptions, reservations,

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In the Presence of:

NORTHERN OHIO SUGAR COMPANY

J. E. Phillips

Re: Frank A. ... President

A. M. Courtney

Secretar

STATE OF COLORADO }
CITY AND COUNTY OF DENVER } ss.

88.

Robert A. Whaley
Notary Public

My Commission expires May 4, 1955

- 5

For Copy of Attached
Maps see file -
Drawers 1-17. Records Office

3633

VOL 479 PAGE 372

WARRANTY DEED—No. 102A

The Ohio Legal Blank Co. Cleveland, Ohio
Publishers and Dealers Since 1922

Know all Men by these Presents

That **NORTHERN OHIO SUGAR COMPANY**, an Ohio Corporation, the Grantor
 who claim title by or through instrument, recorded in Volume, Page,
 County Recorder's Office, for the consideration of Dollars (\$1,700,000.00)
 received to Grantor full satisfaction of
 Great Lakes Sugar Company, an Ohio corporation
 whose TAX MAILING ADDRESS will be the Grantee,

P. O. Box 1348
 Saginaw, Michigan 48605 do

Give Grant, Marquin, Sell and Convey unto the said Grantee,
 heirs and assigns, the following described premises, situated in the of
 County of and State of Ohio:

Three (3) parcels of land more particularly described in Exhibit
 "A" attached hereto and made a part hereof for all purposes,
 together with all improvements thereon and other fixed assets
 and equipment therein, including all spare parts inventories.

This instrument is a duplicate original of an identical instrument,
 executed and delivered for the purpose of filing both duplicate
 originals in separate counties in the State of Ohio, namely
 the Counties of Sandusky and Hancock.

FD-302 (Rev. 5-1-64)

STATE'S
 EXHIBIT
 D

to have and to hold the above granted and bargained premises, with the appurtenances thereof, unto the said Grantee, its heirs and assigns forever.

And the said Grantor, doffor itself and its heirs, executors and administrators, covenant with the said Grantee, its heirs and assigns, that at and until the enrolling of these presents, well seized of the above described premises, as a good and indivisible estate in FEE SIMPLE, and have good right to bargain and sell the same in manner and form as above written, and that the same are free from all incumbrances whatsoever

and that Grantor will Warrant and Defend said premises, with the appurtenances thereunto belonging, to the said Grantee, its heirs and assigns, against all lawful claims and demands whatsoever

And for valuable consideration

In Witness Whereof Grantor have hereunto set its hand, the 19th day of April, in the year of our Lord one thousand nine hundred and eighty-five.

Signed and acknowledged in presence of

Margaret A. Hunt
witness
[Signature]
witness

Northern Ohio Sugar Company

by: *[Signature]*

its: Chairman of the Board and President

Attest: *[Signature]*
Secretary

TEXAS
State of ~~Ohio~~

DALLAS County, ss. Before me, a Notary Public in and for said County and State, personally appeared the above named Northern Ohio Sugar Company, by and through its President, Douglas D. Hunt,

who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, and in the capacity therein stated.

In Testimony Whereof, I have hereunto set my hand and official seal, at this 19th day of April, A. D. 19 85.

This instrument prepared by:
Kramer, White, Baxter & Blanchard
P. O. Box 219
Plano, Texas 75074

[Signature]
Notary Public
My Commission Expires 8/29/85

RECORDED

TO

Transferred - June 24, 19 85
[Signature]
COUNTY AUDITOR

County of Ohio
Received for Record on the
day of _____ at _____ M.
and Recorded _____ in
Book _____ Page _____
COUNTY RECORDER

Records fee \$
This instrument prepared by

Vol. 479
Page 373

located in the County of Hancock and Sandusky
State of Ohio and described as follows:

Parcel No. 1

Situated in the City of Fremont, County of Sandusky and State of Ohio, and known as being a part of Inlots 3662 thru 3665, inclusive, in the F. J. Giebel Subdivision of part of Outlot No. 24, together with part of Outlot No. 24, part of Outlot No. 167, part of Outlot No. 172, part of Outlot No. 173, and Outlot No. 260, in said City:

Beginning at a monument found on the East right-of-way line of North Front Street, and described as lying 187.00 feet North of the intersection of said East right-of-way line, with an Easterly extension of the North right-of-way line of Liberty Street; thence from the above described point of beginning, along the East right-of-way line of North Front Street, North $02^{\circ} 21' 47''$ East, a distance of 2,118.82 feet to a monument found on the Southwest corner of a parcel as described in Deed Volume 240, Page 155, of the Sandusky County Deed Records; thence along the South line of said parcel, North $85^{\circ} 34' 40''$ East, a distance of 235.05 feet to an iron stake found marking the Southeast corner of said parcel; thence along the East line of said parcel, North $02^{\circ} 21' 47''$ East, a distance of 61.54 feet to an iron stake set; thence North $77^{\circ} 03' 35''$ East, a distance of 74.52 feet to an iron stake set on the East line of Inlot No. 3662, said iron described as lying 55 feet North of the Southeast corner of said Inlot; thence North $77^{\circ} 33' 02''$ East, a distance of 74.35 feet to an iron stake set on the East line of Inlot No. 3663, said iron described as lying 50 feet North of the Southeast corner of said Inlot; thence North $89^{\circ} 05' 00''$ East, a distance of 72.00 feet to an iron stake set on the East line of Inlot No. 3664, said iron described as lying 44.96 feet North of the Southeast corner of said Inlot; thence North $89^{\circ} 48' 25''$ East, a distance of 71.95 feet to an iron stake set on the East line of Inlot No. 3665, said iron described as lying 40 feet North of the Southeast corner of said Inlot; thence North $89^{\circ} 45' 17''$ East, a distance of 502.36 feet to an iron stake found; thence South $82^{\circ} 11' 22''$ East, a distance of 20.84 feet to an iron stake found; thence North $08^{\circ} 17' 19''$ East, a distance of 270.91 feet to an iron stake found on the center line of North Street; thence along said center line, North $89^{\circ} 56' 19''$ East, a distance of 271.44 feet to the intersection of said center line, with the Westerly right of way line of the Wheeling & Lake Erie Railway Company; thence along said Westerly right of way line, South $04^{\circ} 06' 27''$ West, a distance of 1,107.33 feet to an iron stake set marking the P. C. of a curve to the right; thence along said curve to the right, having a central angle of $38^{\circ} 49'$, a radius of 1,860.00 feet, a length of curve of 1,260.11 feet, the chord of said curve segment bearing, South $23^{\circ} 30' 57''$ West, a distance of 1,236.15 feet to an iron stake set on the P. T. of said curve; thence continuing along the Westerly right of way line of the Wheeling & Lake Erie Railway Company, South $42^{\circ} 55' 27''$ West, a distance of 240.51 feet to the intersection of said Westerly right of way line, with the Northwestern right of way line of the Norfolk & Western Railroad (Old L.E. & W. Railroad); thence along the Northwestern right of way line of the Norfolk & Western Railroad (Old L.E. & W. Railroad), South $54^{\circ} 06' 34''$ West, a distance of 124.46 feet to a monument found; thence North $89^{\circ} 28' 12''$ West, a distance of 610.48 feet to the point of beginning, and containing 61.192 acres of land, more or less, subject however to all legal highways and prior easements of record.

Parcel No. 2

Situated in the City of Fremont, County of Sandusky and State of Ohio, and known as being a part of Outlot No. 171, part of Outlot No. 174, part of Outlot No. 258, and Outlot No. 259, in the said City:

Beginning at an iron stake found on the West right-of-way of North Front Street, and described as lying 495.00 feet North of the intersection of said West right-of-way line of North Front Street, with the North right of way line of Liberty Street; thence from the above described point of beginning, along the West right-of-way line of North Front Street, also being the East line of Outlot No. 258, and Outlot No. 259, North $02^{\circ} 21' 47''$ East, a distance of 848.40 feet to a monument found marking the intersection of said West right of way line of North Front Street, with the South right of way line of Haynes Street, said monument also marking the Northeast corner of said Outlot No. 259; thence along the South right of way line of Haynes Street, also being the North line of Outlot No. 259, and Outlot No. 171, North $89^{\circ} 24' 31''$ West, a distance of 1,126.73 feet to an iron stake set

CAT NO. 442315
10-1-25-1-1-1-1

Schedule A (Continued)

No. L36 104513

marking the Northeast corner of Inlot No. 3234; thence parallel with the Easterly right of way of Union Street, along the East line of said Inlot No. 3234, and as extended, South $15^{\circ} 43' 49''$ West, a distance of 261.56 feet to an iron stake found; thence North $89^{\circ} 03' 34''$ West, a distance of 119.80 feet to a monument found on the Easterly right of way line of Union Street; thence along said Easterly right of way line South $15^{\circ} 43' 49''$ West, a distance of 300.02 feet to a pipe found; thence South $89^{\circ} 23' 20''$ East, a distance of 165.58 feet to a pipe found; thence South $00^{\circ} 38' 30''$ West, a distance of 349.81 feet to an iron stake found; thence at right angles, South $80^{\circ} 21' 30''$ East, a distance of 15.00 feet to a pipe found; thence South $00^{\circ} 38' 30''$ West, a distance of 299.91 feet to an iron stake found marking the Northwest corner of a 0.344 acre parcel; thence parallel with the North right of way line of Liberty Street, along the North line of said 0.344 acre parcel, and two 0.2583 acre parcels, South $89^{\circ} 19' 54''$ East, a distance of 235.00 feet to a pipe found marking the Northeast corner of said 0.2583 acre parcel; thence parallel with the East right of way line of Wood Street, along the East line of said 0.2583 acre parcel, South $00^{\circ} 38' 30''$ West, a distance of 150.00 feet to an iron stake found on the North right of way line of Liberty Street; thence along said North right of way line, South $89^{\circ} 19' 54''$ East, a distance of 272.23 feet to an iron stake set marking the Southwest corner of a 0.1523 acre parcel; thence along the West line of said parcel, North $00^{\circ} 33' 03''$ West, a distance of 794.84 feet to an iron stake set; thence parallel with the North right of way line of Liberty Street, South $89^{\circ} 19' 54''$ East, a distance of 30.00 feet to an iron stake set; thence parallel with the West right of way line of North Front Street, North $02^{\circ} 21' 47''$ East, a distance of 200.00 feet to an iron stake set; thence parallel with the North right of way line of Liberty Street, South $89^{\circ} 19' 54''$ East, a distance of 649.59 feet to the point of beginning, and containing 29.146 acres of land, more or less, subject however to all prior easements of record.

Parcel No. 3

~~Situated in the City of Findlay, County of Hancock and State of Ohio, and known as being a part of Nye's Outlot No. 16, together with a part of the Easterly 1/2 of the Southeastern 1/4 of Section 23, and part of the Westerly 1/2 of the Southwestern 1/4 of Section 24, T 1 N, R 10 E, a Tract of land bounded and described as follows:~~

~~Beginning at an iron stake marking the Northwest corner of the Southwestern 1/4 of Section 24; thence from the above described point of beginning, along the North line of the Southwestern 1/4 of Section 24, South $89^{\circ} 55' 55''$ East, a distance of 420.76 feet; thence South $00^{\circ} 56' 47''$ West, a distance of 655.68 feet; thence South $68^{\circ} 35' 03''$ East, a distance of 241.26 feet; thence South $00^{\circ} 56' 47''$ West, a distance of 1,156.23 feet to a point on the Limited Access Right of Way line of Lima Avenue; thence along said Limited Access right of way line, along a curve to the left, having a central angle of $15^{\circ} 43' 52''$, a radius of 726.62 feet, and a length of curve of 199.50 feet, the chord of said curve segment bearing, South $76^{\circ} 44' 04''$ West, a distance of 198.88 feet; thence continuing along the Limited Access Right of Way line of Lima Avenue, South $47^{\circ} 54' 37''$ West, a distance of 151.26 feet to the intersection of said right of way line with the Limited Access Right of Way line of State Route Number 15 and 66; thence~~

CITY OF FINDLAY
TO THE CITY OF FINDLAY

Schedule A (Continued)

No.
136 104513

Out along said Limited Access Right of Way line, North $52^{\circ} 39' 01''$ West, a distance of 735.79 feet to an angle point in said right of way line; thence North $49^{\circ} 15' 45''$ West, a distance of 378.99 feet; thence continuing along said right of way line along a curve to the right having a central angle of $32^{\circ} 58' 32''$, a radius of 1,040.9 feet, a length of curve of 590.08 feet, the chord of said curve segment bearing, North $25^{\circ} 19' 55''$ West, a distance of 590.85 feet; thence continuing along the Limited Access Right of Way line of State Route Number 15 and 68, North $00^{\circ} 35' 46''$ West, a distance of 180.75 feet to an angle point in said right of way line; thence North $03^{\circ} 29' 36''$ West, a distance of 191.19 feet to the intersection of said right of way line, with the Southeasterly right of way line of the Norfolk & Western Railroad; thence along said Southeasterly right of way line of the Norfolk & Western Railroad, North $50^{\circ} 37' 07''$ East, a distance of 279.98 feet to an iron stake set on the North line of the Southeasterly $1/4$ of Section 23; thence along said North line, South $88^{\circ} 52' 46''$ East, a distance of 251.48 feet to an iron stake marking the Southwest corner of Nye's Outlot No. 16; thence along the West line of said Outlot, North $01^{\circ} 00' 27''$ East, a distance of 214.44 feet to an iron stake set on the Southeasterly right of way line of the Norfolk & Western Railroad; thence along said Southeasterly right of way line, North $50^{\circ} 37' 07''$ East, a distance of 254.76 feet to an iron stake set; thence South $88^{\circ} 52' 46''$ East, a distance of 152.46 feet to an iron stake set; thence South $01^{\circ} 00' 27''$ West, a distance of 379.90 feet to the point of beginning, and containing 51.345 acres of land, more or less, of which 2.653 acres, more or less, lies in Nye's Outlot No. 16, 24.151 acres, more or less, lies in the Easterly $1/2$ of the Southeasterly $1/4$ of Section 23, and 24.541 acres, more or less, lies in the Westerly $1/2$ of the Southwesterly $1/4$ of Section 24, said Tract subject however to all prior encumbrances of record.

Parcel No. 4

Situated in the City of Findlay, County of Hancock and State of Ohio, and known as being Lot Nos. 9100 thru 9117, Lot Nos. 9050 thru 9061, Lot Nos. 9006 thru 9011, and being a part of Lot Nos. 9001 thru 9005, with the vacated streets adjoining said Lots in the Thorp & Andrews Subdivision, together with a part of the Easterly $1/2$ of the Southeasterly $1/4$ of Section 23, and a part of the Westerly $1/2$ of the Southwesterly $1/4$ of Section 24, T 1 N, R 10 E, a tract of land bounded and described as follows:

Beginning at an iron stake on the East line of the Southeasterly $1/4$ of Section 23, and described as lying, North $01^{\circ} 02' 00''$ East, a distance of 30 feet from a stone found marking the Southeast corner of the Southeasterly $1/4$ of Section 23; thence from the above described point of beginning, North $89^{\circ} 35' 39''$ West, a distance of 1,322.72 feet to a point on the West line of the Easterly $1/2$ of the Southeasterly $1/4$ of Section 23; thence along said West line, South $01^{\circ} 00' 57''$ West, a distance of 21.61 feet to the Southwest corner of the Easterly $1/2$ of the Southeasterly $1/4$ of Section 23; thence along the center line of Greenwood Street, as platted in the Thorp & Andrews Subdivision, South $00^{\circ} 59' 55''$ West, a distance of 8.39 feet; thence along the South line of Lot Nos. 9106 thru 9117, as platted in the Thorp & Andrews Subdivision, North $89^{\circ} 35' 59''$ West, a distance of 625.09 feet to an iron stake set marking the Southwest corner of Lot No. 9117; thence along the West line of said Lot, North $01^{\circ} 06' 09''$ East, a distance of 12.28 feet;

CAT NO. 104511
TO 104511A

Schedule A (Continued)

No.
L16 104511

thence continuing along said West line, North $01^{\circ} 03' 23''$ East, a distance of 122.72 feet to an iron stake set marking the Northwest corner of said Lot No. 9117; thence along the North line of Lot Nos. 9117, 9116, 9115, 9114, 9113, 9112, and 9111, South $89^{\circ} 35' 59''$ East, a distance of 347.07 feet to an iron stake set marking the Northeast corner of said Lot No. 9111; thence crossing Lagrange Street, North $01^{\circ} 02' 00''$ East, a distance of 60.00 feet to an iron stake set marking the Southeast corner of Lot No. 9100; thence along the South line of said Lot, North $89^{\circ} 35' 59''$ West, a distance of 49.58 feet to an iron stake set marking the Southwest corner of said Lot; thence along the West line of Lot Nos. 9100 and 9061, crossing Race Street, and along the West line of Lot No. 9050 and Lot No. 9011, North $01^{\circ} 02' 13''$ East, a distance of 601.19 feet to an iron stake set on the Southeasterly Limited Access Right of way line of Interstate Route 75; thence along said Limited Access Right of Way Line, along a curve to the left, having a central angle of $03^{\circ} 25' 28''$, a radius of 2,098.69 feet, a length of curve of 125.43 feet, the chord of said curve segment bearing, North $51^{\circ} 29' 00''$ East, a distance of 125.41 feet to a point described as lying 100 feet right of Station 743+40, in the center line of survey of Interstate Route Number 75; thence North $56^{\circ} 48' 24''$ East, a distance of 207.89 feet to the intersection of said Limited Access Right of Way Line, with the North line of Lot No. 9005, as platted in the Thorp & Andrews Subdivision; thence along said North line, and as extended, South $89^{\circ} 35' 59''$ East, a distance of 58.58 feet to an iron stake set on the West line of the Easterly 1/2 of the Southeasterly 1/4 of Section 23; thence along said West line, North $01^{\circ} 00' 57''$ East, a distance of 21.74 feet to the Southwesterly Limited Access Right of Way Line of State Route Number 15 and 68; thence along said Southwesterly Limited Access Right of Way Line, North $64^{\circ} 27' 06''$ East, a distance of 218.17 feet; thence along a curve to the right, having a central angle of $33^{\circ} 49' 37''$, a radius of 600.00 feet, a length of curve of 354.23 feet, the chord of said curve segment bearing, South $85^{\circ} 25' 26''$ East, a distance of 349.11 feet; thence continuing along said Southwesterly Limited Access Right of Way Line, South $66^{\circ} 35' 07''$ East, a distance of 247.26 feet; thence South $63^{\circ} 59' 24''$ East, a distance of 195.21 feet; thence South $54^{\circ} 50' 38''$ East, a distance of 584.44 feet; thence South $51^{\circ} 16' 43''$ East, a distance of 95.05 feet to the intersection of said Southwesterly Limited Access Right of Way Line of State Route Number 15 and 68, with the Northwesterly Limited Access Right of way Line of Lima Avenue; thence along said Northwesterly Limited Access Right of Way Line, South $47^{\circ} 54' 37''$ West, a distance of 150.27 feet; thence South $72^{\circ} 43' 00''$ East, a distance of 32.62 feet; thence along a curve to the left, having central angle of $21^{\circ} 53' 25''$, a radius of 504.41 feet, a length of chord of 192.71 feet, the chord of said curve segment bearing, South $05^{\circ} 23' 10''$ West, a distance of 191.54 feet; thence South $04^{\circ} 19' 26''$ East, a distance of 177.40 feet; thence North $89^{\circ} 38' 58''$ West, a distance of 108.91 feet to the point of beginning, and containing 37.765 acres of land, more or less, of which 7.722 acres, more or less, lies in Lots and vacated streets in the Thorp & Andrews Subdivision, 28.606 acres, more or less, lies in the Easterly 1/2 of the Southeasterly 1/4 of section 23, and 1.437 acres, more or less, lies in the Westerly 1/2 of the Southwesterly 1/4 of Section 24, said Tract subject however to all legal highways and prior easements of record.

T.P. 60-308490
60-1001476
60-1001477
60-1001478
60-100920
61-51306
61-51340

END OF SCHEDULE A.

I hereby certify that this plat complies with section 11273 of the Revised Code.
Notary Public
MARILYN C. HARTMAN

VOL 479 PAGE 378

Wilmam
3633 ✓

FILED AND RECORDED
JUN 24 1985
AT 10:00 O'CLOCK A.M.
VOL 479 PAGE 372
NORMAN LEE HOWE
RECORPER HANDED CO. DING
PER \$20.00 PAID

Draft
11705

VOL 511 PAGE 731
TRUSTEE'S DEED

NORTHERN OHIO SUGAR COMPANY, a Delaware corporation, as Debtor-in-Possession ("Grantor"), Case No. 385-30621-M-11, pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, for and in consideration of those considerations described in that certain Offer to Purchase, executed and performed by Owen Hobbs, and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, and pursuant to the order of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, entered on the 30th day of June, 1986, in the case styled Northern Ohio Sugar Company; Case No. 385-30621-M-11, has conveyed, and by these presents does convey unto the assignee of Owen Hobbs, H&O Trucking & Excavating, Inc., 1020 Blanchard Avenue, Findlay, Ohio 45840, an Ohio corporation ("Grantee"), the real property situated in Hancock County, Ohio more particularly described on Exhibit A attached hereto and by this reference incorporated herein (herein called the "Property");

TO HAVE AND TO HOLD all of the Property and premises unto the same Grantee, its successors and assigns forever; and for the same consideration, Grantor, for itself and its successors and assigns, does hereby warrant unto Grantee, its successors and assigns, title to the Property against any persons now or hereafter claiming same or any part thereof.

EXECUTED this 10th day of December, 1986.

Reference Volume 511 Page 776



Glen Adams
Glen Adams, Secretary

NORTHERN OHIO SUGAR COMPANY
a Delaware corporation, DEBTOR-
IN-POSSESSION

By *Glen Adams*
Glen Adams, President

STATE'S
EXHIBIT
E

STATE OF TEXAS)
COUNTY OF DALLAS)

VOL 511 PAGE 732

The foregoing instrument was acknowledged before me this
10th day of ~~July~~ 1986 by Glen Adams, Secretary and President of
The Great Western Sugar Company, a Delaware corporation, Debtor-
in-Possession, on behalf of such corporation.

Witness my hand and official seal.



Naomi Kay Hall Williams
Notary Public

Commission expires:

8/23/89

EXHIBIT A

Vol 511 PAGE 733

located in the city of Findlay, County of Hancock and State of Ohio, and known as being a part of Nye's Outlot No. 16, together with a part of the Easterly 1/2 of the Southeasterly 1/4 of Section 23, and part of the Westerly 1/2 of the Southwesterly 1/4 of Section 24, T 1 N, R 10 E, a Tract of land bounded and described as follows:

beginning at an iron stake marking the Northwest corner of the Southwesterly 1/4 of Section 24; thence from the above described point of beginning, along the North line of the Westerly 1/4 of Section 24, South 89° 55' 55" East, a distance of 420.76 feet; thence South 00° 56' 47" West, a distance of 655.68 feet; thence South 88° 35' 03" East, a distance of 241.26 feet; thence South 00° 56' 47" West, a distance of 1,156.23 feet to a point on the Limited Access Right of Way line of Lima Avenue; thence along said Limited Access Right of Way line, along a curve to the left, having a central angle of 15° 43' 52", a radius of 726.62 feet, and a length of 199.50 feet, the chord of said curve segment bearing, North 76° 44' 04" West, a distance of 198.88 feet; thence continuing along the Limited Access Right of Way line of Lima Avenue, South 47° 54' 37" West, a distance of 151.26 feet to the intersection of said right of way line with the Limited Access Right of Way line of State Route Number 15 and 68; thence along the Limited Access Right of Way line, North 52° 39' 01" West, a distance of 735.79 feet to an angle point in said right of way line; thence North 49° 15' 45" West, a distance of 378.99 feet; thence continuing along said right of way line along a curve to the right having a central angle of 32° 58' 32", a radius of 1,009.9 feet, a length of curve of 599.08 feet, the chord of said curve segment bearing, North 25° 19' 55" West, a distance of 85 feet; thence continuing along the Limited Access Right of Way line of State Route Number 15 and 68, North 00° 35' 46" West, a distance of 380.75 feet to an angle point in said right of way line; thence North 03° 29' 36" West, a distance of 191.19 feet to the intersection of said right of way line with the Southeasterly right of way line of the Norfolk & Western Railroad; thence along said Southeasterly right of way line of the Norfolk & Western Railroad, North 50° 37' 07" East, a distance of 279.98 feet to an iron stake set on the North line of the Southeasterly 1/4 of Section 23; thence along said North line, South 88° 52' 46" East, a distance of 251.48 feet to an iron stake marking the Southwest corner of Nye's Outlot No. 16; thence along the West line of said Outlot, North 01° 00' 27" West, a distance of 214.44 feet to an iron stake set on the Southeasterly right of way line of the Norfolk & Western Railroad; thence along said Southeasterly right of way line, North 50° 37' 07" East, a distance of 254.76 feet to an iron stake set; thence South 88° 52' 46" East, a distance of 152.46 feet to an iron stake set; thence South 01° 00' 27" West, a distance of 379.90 feet to the point of beginning, and containing 2.345 acres of land, more or less, of which 2.653 acres, more or less, lies in Nye's Outlot No. 16, 24.151 acres, more or less, lies in the Easterly 1/2 of the Southeasterly 1/4 of Section 23, and 24.541 acres, more or less, lies in the Westerly 1/2 of the Southwesterly 1/4 of Section 24, said Tract subject however to all prior easements of record.

ATTACHMENT 3

RECEIVED

DEC 23 2002

Attorney General
Toledo Regional Office

IN THE COMMON PLEAS COURT OF HANCOCK COUNTY, OHIO

GORDON PROCTOR, DIRECTOR
OHIO DEPARTMENT OF TRANSPORTATION,

Case No. 2002-CV-472

Plaintiff,

JUDGE NIEMEYER

-vs-

MICHIGAN SUGAR COMPANY, *et al.*,

AFFIRMATIVE DEFENSES AND
ANSWER OF DEFENDANT
NORFOLK SOUTHERN
RAILWAY COMPANY

Defendants

The defendant, Norfolk Southern Railway Company, for its response to the plaintiff's Complaint, states the following:

Answer

1. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1. of the Complaint and therefore this defendant denies the allegations contained in paragraph 1. of the Complaint.

2. This defendant admits the allegations contained in paragraph 2. of the Complaint.

3. This defendant claims a right to use the rail spur, railway right of way, and easement it owns, in, on, over, and across the real estate which is the subject of this action. This defendant denies all other allegations contained in paragraph 3. of the Complaint.

4. This defendant admits the allegations contained in paragraph 4. of the Complaint.

5. This defendant admits the allegations contained in the first sentence of paragraph 5. of the Complaint and denies the allegations contained in the second sentence of paragraph 5. of the Complaint.

6. This defendant admits the allegations contained in paragraph 6. of the Complaint.

7. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7. of the Complaint and therefore this defendant denies the allegations contained in paragraph 7. of the Complaint.

8. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8. of the Complaint and therefore this defendant denies the allegations contained in paragraph 8. of the Complaint.

9. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9. of the Complaint and therefore this defendant denies the allegations contained in paragraph 9. of the Complaint.

10. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10. of the Complaint and therefore this defendant denies the allegations contained in paragraph 10. of the Complaint.

11. This defendant admits the allegations contained in paragraph 11. of the Complaint.

12. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12. of the Complaint and therefore this defendant denies the allegations contained in paragraph 12. of the Complaint.

13. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13. of the Complaint and therefore this defendant denies the allegations contained in paragraph 13. of the Complaint.

14. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14. of the Complaint and therefore this defendant denies the allegations contained in paragraph 14. of the Complaint.

15. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15. of the Complaint and therefore this defendant denies the allegations contained in paragraph 15. of the Complaint.

16. This defendant denies the allegations contained in paragraph 16. of the Complaint.

17. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17. of the Complaint and therefore this defendant denies the allegations contained in paragraph 17. of the Complaint.

18. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18. of the Complaint and therefore this defendant denies the allegations contained in paragraph 18. of the Complaint.

19. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19. of the Complaint and therefore this defendant denies the allegations contained in paragraph 19. of the Complaint.

20. This defendant admits the allegations contained in paragraph 20. of the Complaint.

21. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21. of the Complaint and therefore this defendant denies the allegations contained in paragraph 21. of the Complaint.

22. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22. of the Complaint and therefore this defendant denies the allegations contained in paragraph 22. of the Complaint.

23. Answering paragraphs 1 through 22 are incorporated herein by reference as if fully stated.

24. This defendant denies the allegations contained in paragraph 24. of the Complaint.

25. This defendant denies the allegations contained in paragraph 25. of the Complaint.

26. This defendant denies the allegations contained in paragraph 26. of the Complaint.

27. Answering paragraphs 1 through 26 are incorporated herein by reference as if fully restated.

28. This defendant denies the allegations contained in paragraph 28. of the Complaint.

29. Answering paragraphs 1 through 28 are incorporated herein by reference as if fully restated.

30. This defendant admits the allegations contained in paragraph 30. of the Complaint.

31. This defendant denies the allegations contained in paragraph 31. of the Complaint.

32. Answering paragraphs 1 through 31 are incorporated herein by reference as if fully restated.

33. This defendant admits the allegations contained in paragraph 33. of the Complaint.

34. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34. of the Complaint and therefore this defendant denies the allegations contained in paragraph 34. of the Complaint.

35. This defendant admits the allegations contained in paragraph 35. of the Complaint.

36. This defendant denies the allegations contained in paragraph 36. of the Complaint.

37. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37. of the Complaint and therefore this defendant denies the allegations contained in paragraph 37. of the Complaint.

38. Answering paragraphs 1 through 37 are incorporated herein by reference as if fully restated.

39. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39. of the Complaint and therefore this defendant denies the allegations contained in paragraph 39. of the Complaint.

40. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40. of the Complaint and therefore this defendant denies the allegations contained in paragraph 40. of the Complaint.

41. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41. of the Complaint and therefore this defendant denies the allegations contained in paragraph 41. of the Complaint.

42. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42. of the Complaint and therefore this defendant denies the allegations contained in paragraph 42. of the Complaint.

First Affirmative Defense

Lack of Privity

The plaintiff is not in privity with the Great Lakes Sugar Company and was not an intended beneficiary under the Grant of Easement recorded in Volume 198, Page 70, of the Deed Records of Hancock County, Ohio (State's Exhibit A to the plaintiff's Complaint), and therefore may not succeed to or enforce the rights of Great Lakes Sugar Company and may not receive any benefits that might accrue to Great Lakes Sugar Company under the Grant of Easement.

Second Affirmative Defense

Performance of Contract

The plaintiff entered into and performed under the Agreement recorded at Volume 261, Page

363, Deed Records, Hancock County, Ohio, Recorder's Office (State's Exhibit B to the plaintiff's Complaint), with respect to which Agreement this defendant's predecessor in interest was an intended beneficiary. The plaintiff may not now, forty-six (46) years later, disavow the validity of that agreement to suit its current agenda.

Third Affirmative Defense

One who seeks equity must do equity; unclean hands

The plaintiff requests equitable relief from this Court while attempting to avoid its obligations under agreements it entered into with Great Lakes Sugar Company under which this defendant's predecessor in interest, The New York, Chicago and St. Louis Railroad Company, was an intended beneficiary. The plaintiff must do equity to seek or receive equity. By attempting to repudiate an agreement after 46 years in order to gain current advantage, the plaintiff is not doing equity. The plaintiff has violated good faith by attempting to repudiate its agreement with this defendant's predecessor in interest. The plaintiff does not come in to equity with clean hands. The plaintiff is not entitled to any equitable relief from this Court.

Fourth Affirmative Defense

Preemption by Federal Law

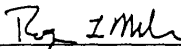
The proposed actions of the plaintiff exceed the authority of the plaintiff as they interfere with rail transportation and therefore are preempted by the Interstate Commerce Commission Termination Act of 1995 (the "ICCTA"), 49 U.S.C. Section 10101, *et seq.*

The proposed actions of the plaintiff also exceed the authority of the plaintiff as they interfere with the uniform scheme of rail transportation regulation envisioned by the Federal Rail Safety Act of 1970, 49 U.S.C. Section 20106, and therefore are preempted by the Federal Rail Safety Act of 1970.

WHEREFORE, the defendant Norfolk Southern Railway Company prays that the Court 1)

dismiss the plaintiff's Complaint with prejudice, 2) assess the costs of this proceeding including this defendant's reasonable attorneys fees against the plaintiff, and 3) grant this defendant such other relief as shall be just and proper.

BETTS, MILLER & RUSSO
101 West Sandusky Street
Findlay, Ohio 45840
Telephone: (419) 422-5565
COUNSEL FOR DEFENDANT,
NORFOLK SOUTHERN RAILWAY
COMPANY

By: 
Roger L. Miller (0006242)

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Affirmative Defenses and Answer of Defendant Norfolk Southern Railway Company was sent by regular U.S. Mail, postage prepaid, to the following persons on this 20th day of December, 2002:

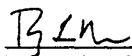
Michael L. Stokes, Esq.
Assistant Attorney General
One Seagate, Suite 2150
Toledo, OH 43604
Attorney for Plaintiff

Charles D. Niehaus, Esq.
Kenney & Niehaus, Ltd.
5630 North Main Street
Sylvania, OH 43650
Attorney for Defendant
Michigan Sugar Company

Jim Hickerson, individually and
d/b/a Jim Hickerson Excavating
816 Fox Street
Findlay, Ohio 45840

Pierce Hardy Limited Partnership
c/o CT Corporation System, Registered Agent
1300 East 9th Street
Cleveland, Ohio 44114

Northern Ohio Sugar Company
c/o CT Corporation System, Registered Agent
925 Euclid Avenue
Cleveland, Ohio 44115


Roger L. Miller

ATTACHMENT 4

Stokes

RECEIVED

SEP 10 2003

HANCOCK COUNTY, OH
FILED

SEP 5 PM 4:03

CLERK OF COURTS

Attorney General
Toledo Regional Office

IN THE COURT OF COMMON PLEAS
HANCOCK COUNTY, OHIO

Gordon Proctor, Director,
Ohio Department of Transportation

Plaintiff,

v.

Michigan Sugar Company, et al.

Defendants.

Case No.2002-CV-472

Judge Niemeyer

PRETRIAL ORDER

This matter came before the Court on August 29, 2003 with the parties' stipulated agreement to stay this case for six months to allow the referral of certain issues to the Surface Transportation Board of the United States Department of Transportation.

The stay shall begin upon journalization of this order. All until further order of the Court.

IT IS SO ORDERED.


JOSEPH H. NIEMEYER, JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of September, 2003 a time-stamped copy of the foregoing was delivered to Roger Miller by placing same in his delivery drawer in the office of the Clerk of Court and to the following by ordinary U.S. Mail:

Charles D. Niehaus
Kenney & Niehaus
5630 N. Main Street
Sylvania, OH 43560

Michael L. Stokes
Assistant Attorney General
One SeaGate, Suite 2150
Toledo, OH 43604


CAROL BURGESS, Judicial Assistant

ATTACHMENT 5



Norfolk Southern Corporation
Industrial Development Department
100 E. Campus View Blvd.
Suite 180
Columbus, Ohio 43235
614 438-6939 FAX

Gerald A. Leimbach
Industrial Development Manager
614 438-6913

October 30, 1998

Via Facsimile

Mr. Russ Kathrein, Vice-President-Dev.
84 Lumber Company (Development Corp)
P. O. Box 8484
Eighty-four, Pennsylvania 15330

Dear Mr. Kathrein:

This has reference to conversations with Jim Zaunick of 84 Lumber, Duane Kuzak of Raven Logistics, and Jack Arnett of Ohio Track regarding 84 Lumber's interest in a parcel of land in Findlay, Ohio, adjacent to our siding that served Great Lakes Sugar.

On Thursday, October 22, I and other Norfolk Southern personnel met with Duane Kuzak and Jack Arnett to discuss the project. Our meeting led to the following:

1. Norfolk Southern would own and maintain the track from the P.S.(point-of-switch) to the existing derail.
2. Norfolk Southern would sell to 84 Lumber approximately 2800 feet of track from the derail to a point at approximately where the overhead power lines cross the track. Sale price for the track, \$5500.
3. 84 Lumber would be responsible for rehabilitating the purchased track, subject to our approval and future maintenance. As information, our Division Engineer recommends installing heavier rail; however, this is not mandatory.
4. 84 Lumber would sign our standard operating and maintenance agreement(Siding agreement) prior to the commencement of service over the track. A sample copy will be furnished for your review.

Please let me know if you will proceed with the project on the above basis and I will furnish a more formal agreement. If you have any questions, call me.

Sincerely,

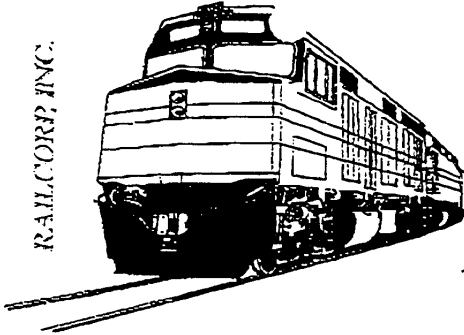
A handwritten signature in dark ink, appearing to read 'Gerald A. Leimbach', written over a printed name and title.
Gerald A. Leimbach
Industrial Development Manager

GAL/sds
Attachment

cc: Duane Kuzak

ATTACHMENT 6

RAILCORP, INC.



RAILCORP, INC.

1550 North Bailey Road
North Jackson, Ohio 44451
Phone: (330) 538-2261
Toll Free: (800) 788-2264
Fax: (330) 538-2223

TRACK CONSTRUCTION • ENGINEERING • MAINTENANCE

December 1, 1998

PROPOSAL NUMBER

11-98-R156

84 Lumber Company
4121 Washington Road
McMurray, PA 15317

Ref: Railroad Track Rehabilitation, 84 Lumber
Facility, Findlay, OH

Attn: Mr. Russ Kathrein
Vice President of Development

Base Bid: **\$46,588.00**

Dear Mr. Kathrein:

Thank you for inviting Railcorp, Inc. to bid on this project. We are pleased to offer the following proposal:

I. Rehabilitate Approximately 2,300' of Railroad Track

- A. Replace 1,100 defective crossties with good relay 6" x 8" x 8' x 6" crossties, furnishing new track spikes.
- B. Check track gauge from the existing derail to the track's end. Re-gauge where necessary.
- C. Tighten loose track bolts and replace 200 defective bolts with new track bolts with lock washers.
- D. Furnish and install 350 net tons of new ballast.
- E. Raise, machine power tamp and dress to the proper profile.
- F. Furnish and install one each set of relay wheel stops at the track's termination point.

Total Cost Item I \$46,588.00

Notes:

1. Defective rail will be replaced with existing excess rail on site.
2. All defective crossties will be stacked neatly on site.
3. In the event that you wish to have the old crossties hauled off site, add \$5,700.00.
4. Our price also includes removing dirt from one 40' road crossing.
5. Deduct \$37.00 for each crosstie that is not furnished and installed.
6. Workmanship is guaranteed for one year from date of track acceptance.
7. Railcorp, Inc. would not be responsible for broken rails caused by normal wear and tear.

PURCHASE ORDER

Send all invoices and Correspondences to:

THE MAGERKO CORPORATION
 4121 WASHINGTON ROAD
 McMURRAY, PA 15317
 (724) 941-8497

VENDOR:

Railcorp, Inc.
 1550 North Bailey Road
 North Jackson, Ohio 44451
 330-538-2261

STORE: Findlay, OH

JOB #: 8764

JOB: Rehabilitate Approx. 2300' of Railroad Track

***** IMPORTANT *****
 Our Purchase Order No. must Appear on
 Packing Slips, Bills of Lading and All
 Other Correspondence.

Purchase Order No.	Original P.O. Date
8764-0019	12/1/98
Date Revised	

☒ Original P.O.☐ Revised P.O.☐ P.O. Approved for Payment☒ P.O. Approved for Partial Payment

SPECIAL INSTRUCTIONS:

Terms:

Start Date: 12/14/98

Prop. Finish: 1/8/98

FOB:

Ship Via:

Vendor Reference:
Proposal 11-98-R156

330-538-2261

ACCOUNT CODE	ITEM NUMBER	QUANTITY RECEIVED	QUANTITY ORDERED	UNIT TYPE	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
9620	1	1	1	Job	Rehabilitate Approximately 2300' of Railroad Track	\$46,588.00	\$46,588.00
					A. Replace 1100 defective cross-ties with good relay 6x8x6 cross-ties, furnishing new track spikes	\$	\$
					B. Check track gauge from the existing deraill to the track's end. Re-gauge where necessary.	\$	\$
					C. Tighten loose track bolts and replace 200 defective bolts with new track bolts with lock washers.	\$	\$
					D. Furnish and install 350 net tons of new ballast.	\$	\$
					E. Raise, machine power tamp and dress to proper profile.	\$	\$
					F. Furnish and install one each set of relay wheel stops at the track's termination point.	\$	\$
					Notes:	\$	\$
					1. Defective rail will be replaced with existing excess rail.	\$	\$
					2. All defective cross-ties will be stacked neatly on site.	\$	\$
					3. Add \$5,700 to have old cross-ties hauled off site.	\$	\$
					4. Price includes removing dirt from one 40' road crossing	\$	\$
					5. Deduct \$37.00 for each cross-tie that is not furnished and installed. 6. One year guarantee on workmanship.	\$	\$
					SUBTOTAL		\$46,588.00
					TAX		\$
					TOTAL PURCHASE PRICE		\$46,588.00

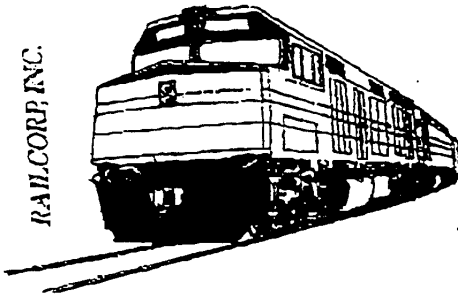
The above PO represents an agreement between Magerko Corporation and the Vendor for a specific quantity and price of materials and/or services. Any variation must be approved in writing by Magerko Corp. in order for payment to be made.

BY

Purchasing Agent

1 of 1

RAILCORP, INC.



FILE

RAILCORP, INC.

1550 North Bailey Road
North Jackson, Ohio 44451
Phone: (330) 538-2261
Toll Free: (800) 788-2264
Fax: (330) 538-2223

TRACK CONSTRUCTION • ENGINEERING • MAINTENANCE

January 29, 1999

INVOICE NO

99-042

983156

84 Lumber Company
4121 Washington Rd.
McMurray, Pennsylvania 15317

Attn: Mr. Stephen Thompson
Purchasing Agent

Ref: Railroad Track Work, 84 Lumber Co. Findlay, Ohio Facility - Job # 8764

Gentlemen:

Please accept this as our invoice for the following railroad track work performed:

- I. Rehabilitate Approximately 2,300' of Railroad
- A. Replaced 1,032 cross ties with good relay 6" x 8" x 8' x 6" cross ties, furnishing new track spikes.
 - B. Performed the remainder of our work per our proposal # 11-98-R156

1100
1032
68

AMOUNT REQUESTED THIS INVOICE \$44,072.00
Terms: Net 30 Days

We wish to thank you for allowing us the opportunity of working with your company on this project.

Very Truly Yours,
RAILCORP, INC.

Edward Kennedy
Edward Kennedy

ERK/cic

9620-5273
\$34,072.00
577-2/16/99

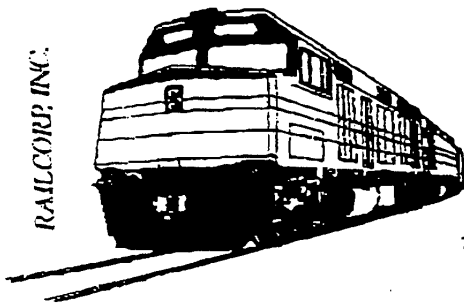
2/5/99
approved for
\$34,072.00
until inspection
is completed

02/05/99 10:04

TX/RX NO.9051

P.003

RAILCORP, INC.



RAILCORP, INC.

1550 North Bailey Road
North Jackson, Ohio 44451
Phone: (330) 538-2261
Toll Free: (800) 788-2264
Fax: (330) 538-2223

TRACK CONSTRUCTION • ENGINEERING • MAINTENANCE

February 5, 1999

PROPOSAL NUMBER
02-99-R028

84 Lumber Company
4121 Washington Road
McMurray, Pa 15317

Ref: 84 Lumber Co. Findlay, Ohio Facility

Attn: Mr. Steve Hobba
Project Manager

Base Bid: As Listed

Gentlemen:

Please consider this as our proposal for additional railroad track work:

I. Gauge Rods - 25 Each

A. N & S Corporation has requested 25 gauge rods be installed on the track.

Total Cost Item I ~~\$1,100.00~~ ^{\$750⁰⁰}

II. Ties For Unloading Dock

A. Furnish and install 28 Relay cross ties.

B. Drill 60 holes and make necessary cuts.

C. Furnish and install 30 nuts and washers.

Total Cost Item II ~~\$2,700.00~~ ^{\$1,000⁰⁰} + MATERIAL

Total Cost Items I & II \$3,800.00

We wish to thank you for allowing us the opportunity of submitting our proposal on this project and hope that it meets with your approval. If you have any questions, please contact me at (800) 788-2264.

Very Truly Yours,
RAILCORP, INC.

Edward Kennedy
Edward Kennedy
Project Manager

ATTACHMENT 7

FROM :

PHONE NO. :

Mar. 05 1999 08:30AM P1



Mr. Kennedy.

The track at 84 Lumber in Findlay Ohio
has been checked and OK for service.

Thank you

Steve Chandler Norfolk Southern Railway Corp.
419-222-7741

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No.34415

OHIO DEPARTMENT OF TRANSPORTATION
-PETITION FOR DECLARATORY ORDER-
STATUS OF TRACK AT FINDLAY, HANCOCK COUNTY, OH

VERIFIED STATEMENT
OF
DANIEL M. KASEMAN

My name is Daniel M. Kaseman, and I am the Production Administrator for District One of the Ohio Department of Transportation, with offices at 1855 North McCullough Street, Lima, Ohio 45801. I am licensed as a professional engineer in Ohio.

Among my responsibilities is overseeing the reconstruction of the highway bridge on the by-pass of U.S. Highway 68/State Route 15 around Findlay, Ohio, in the vicinity of Lima Avenue. The bridge is nearly fifty years old and in need of repair. More importantly, however, it does not meet current design standards for safety. Interstate Highway I-75 is just to the west of the bridge, and motorists driving on the by-pass are unable to see the interchange with I-75 until they are at the top of the bridge. If there is a back-up caused by the merger of vehicles into the traffic flows on I-75 or if slow-moving trucks are merging from Lima Avenue on the up-grade toward the I-75 interchange, the motorists may have difficulty braking in time to avoid a rear-end collision. In addition, because of the inadequate sight distance over the bridge, motorists may

have to make an unsafe, last-minute decision to change lanes to be in the correct lane for the I-75 interchange.

In other words, the bridge fails to meet current standards for decision sight distance between the crest of the bridge and the interchange with I-75. As part of the planned reconstruction project, the Department plans to lower the grade of the bridge to allow the motorists to see the interchange with I-75, increasing the decision sight distance.

The bridge passes over the 20-foot right of way of the former Nickel Plate industry track which served the sugar plant of the Great Lakes Sugar Company.

I personally have walked along the track, beginning at the switch on the Norfolk Southern main line, continuing past the loading dock of 84 Lumber north of the bridge, and for a further distance of about 1,750 feet beneath the bridge and unto the property of Michigan Sugar Company.

The track has been rehabilitated by 84 Lumber for about 200 feet past the loading dock. Beyond that point, however, the track is in shambles. Pieces of rail have been removed for much of the next 750 feet of the track's length. Most of the ties have rotted to the point that I was able to pull out spikes by hand. Several trees have grown thick branches over the rails. And at places the rail bed has washed out altogether, with no ballast or sub-grade in place.

The end of the 750-foot segment is about 100 feet north of the U.S. Highway 68/State Route 15 right-of-way for the highway bridge. At that point, the track has been paved over for the asphalt drive into the lumberyard, and an 84 Lumber directional sign is mounted on 4x4 posts straddling the rails. Between the asphalt drive and the bridge, many ties were rotted to the point that I was able to pull out spikes by hand.

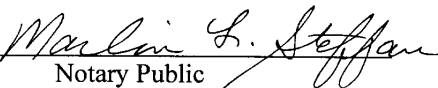
Where it is sheltered under the bridge, the track is in fairly good shape. As the track emerges from beneath the bridge, however, it is buried under thick turf and soil. One rail was buried for about 200 feet. About 600 feet into the northerly side of Michigan Sugar's property, a switch divides the single track into two segments roughly 180 and 150 feet long. Along the single track, and along each of the two segments, the ties were so rotted that the spikes could be pulled out by hand in dozens of places. Both segments ended several hundred feet short of the Michigan Sugar buildings. All of the other trackage shown on the 1956 rail relocation drawing has been removed.

It was clear to me that the track hasn't been used in years. Indeed, the Department was advised by Michigan Sugar Company's local manger, Mr. Tom Brickley, that the sugar company hasn't received railroad service over the track for at least 12-15 years.

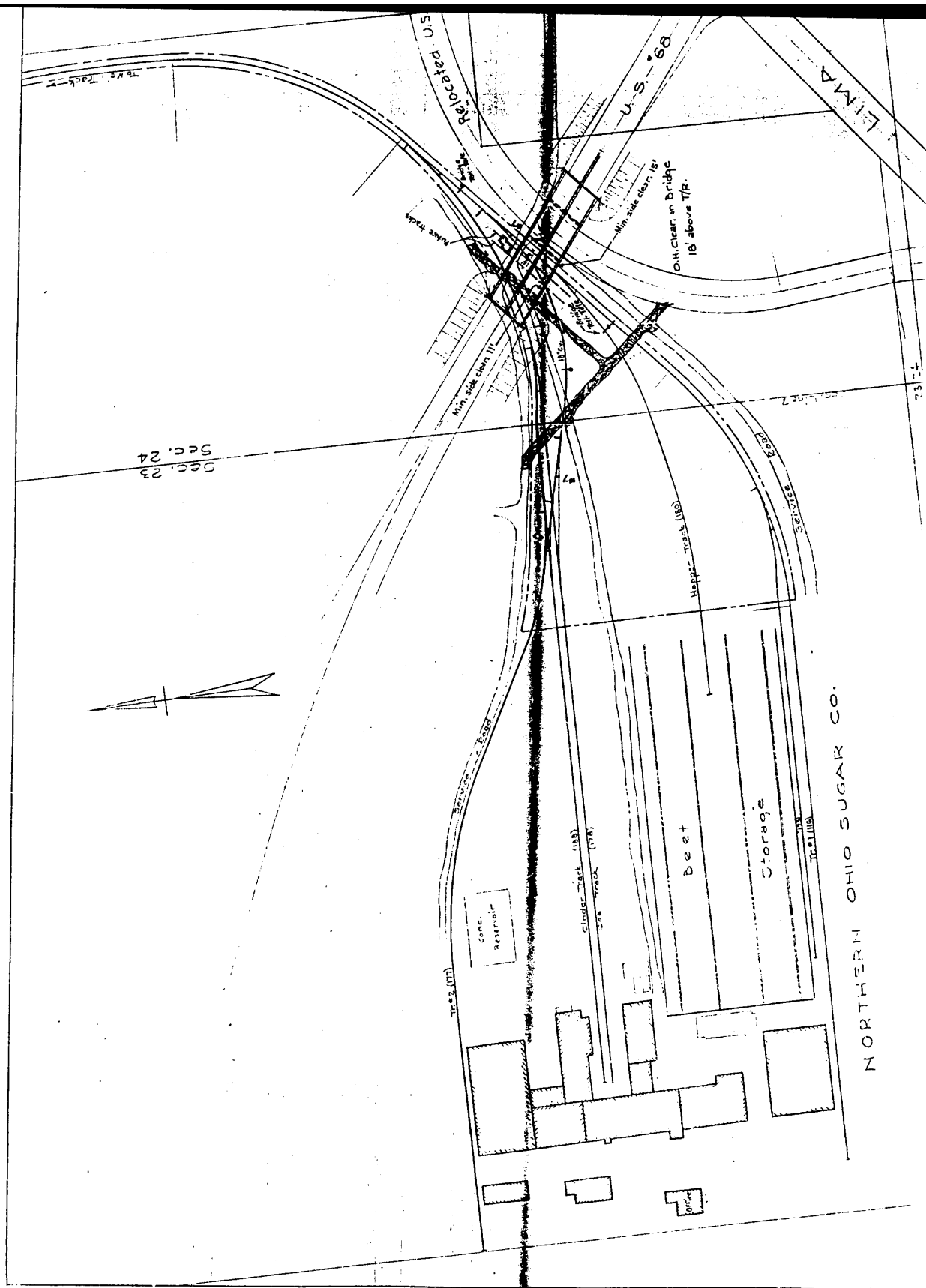
I, therefore, am of the opinion that lowering the bridge, as the Department proposes, in no way will alter the situation as it now exists. There is not and cannot be any railroad service rendered on the track beyond the end-point of the rehabilitation on the 84 Lumber property north of the highway bridge, and, therefore, the rebuilding of the bridge will not in any way disrupt the flow of railroad traffic on the track.


Daniel M. Kaseman

Signed and sworn to before me this 16 day of October 2003.


Notary Public

(Seal) **MARLIN L. STEFFAN**
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires March 26, 2005



BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34415

OHIO DEPARTMENT OF TRANSPORTATION
PETITION FOR DECLARATORY ORDER
STATUS OF TRACK AT FINDLAY, HANCOCK COUNTY, OH

VERIFIED STATEMENT
OF
CANDICE CEHELNIK

My name is Candice Cehelnik, and I am the Development Coordinator of 84 Lumber Company. Our corporate headquarters is located at 1019 Route 519, Building #5, Eighty Four, PA 15330-1584.

84 Lumber is the largest privately held supplier of building materials in the United States. Founded in 1956 by Joe Hardy in the town of Eighty Four, Pennsylvania, approximately 20 miles south of Pittsburgh, 84 Lumber has over 450 stores in 34 states from coast to coast.

In two of the past three years, 84 Lumber sold more building materials to professional contractors and remodelers than any other supplier. The company reported sales of over \$2 billion in 2002, with 75 percent of that total to professional contractors.

84 Lumber relies heavily upon railroad transportation for the receipt of lumber shipments. Norfolk Southern Railway Company is one of the providers of rail service to 84 Lumber, and the two companies enjoy a cordial and productive working relationship.

84 Lumber Store No. 0363 is in Findlay, Ohio. It is located at 1120 Lima Avenue, on a tract of land northeast of the intersection of the U.S. Highway 84/State Route 15 By-pass and Lima Avenue.

I have no personal knowledge of the rehabilitation of the track at our Findlay, Ohio store. However, our records as expressed through the following documents indicate the following sequence of events.

The former Nickel Plate industrial track, connecting a main line of what is now the Norfolk Southern Railway Company with the sugar plant of the Great Lakes Sugar Company, runs through the 84 Lumber property. The track had not been used and was in deplorable shape.

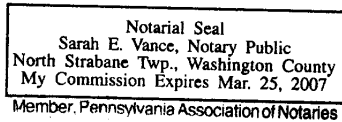
In the Fall of 1998 a representative of 84 Lumber explored with the Industrial Development Department of the Norfolk Southern Corporation acquiring the former Nickel Plate industrial track so that the Findlay store might receive railroad shipments of lumber. After some negotiations, Norfolk Southern Corporation agreed to sell 84 Lumber 2,800 feet of track, beginning at a point on the right-of-way of Norfolk Southern Railway Company, for \$5,500.00. 84 Lumber accepted the offer and bought the track.

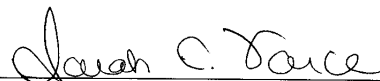
84 Lumber engaged a contractor, Railcorp, Inc., of North Jackson, Ohio, to rehabilitate the first 2,300 feet of track. The company replaced about 1,100 defective ties and added about 350 tons of ballast. The work performed cost 84 Lumber \$44,822.00. 84 Lumber spent another \$3,800.00 to have an unloading dock built. On March 5, 1999, a representative of Norfolk Southern Railway Company checked the rehabilitated track and O.K.'d it for service, and the railroad has served the facility ever since.

I found some documentation supporting the former in my files and made copies available to Michael L. Stokes of the Ohio Attorney General's Office.


Candice Cehelnik

Subscribed and sworn to before me this 13th day of October 2003.




Notary Public

(Seal)

84 LUMBER DEVELOPMENT

1019 ROUTE 519,BUILDING #5

EIGHTY FOUR, PA 15330-1584

724-228-3636

FACSIMILE TRANSMITTAL SHEET

TO: Michael Stokes

FROM: Candice Cehelnik

FAX: 419-245-2520

FAX: 724-228-2975

RE: Rehabilitation of Rail Spur

DATE: April 9, 2003

CC:

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

TOTAL NUMBER OF PAGES INCLUDING COVER: 13

Michael,

I have included some random files that may or may not help you in regards to our rail spur. If you have any other questions, please don't hesitate to give me a call. I have not been able to determine where the easement came from as of yet but I hope to uncover something soon.

Thanks,

Candice

CONFIDENTIALITY NOTICE

The documents accompanying this facsimile message contain confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the recipient, you are hereby notified that any disclosure, copying or distribution of, or the taking of any action in reliance on, the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by collect telephone call and return the facsimile message to us at the address below via U.S. Postal Service. Thank you.

THE MAGERKO CORPORATION NO LIEN CONTRACTOR AGREEMENT

This Agreement is made this 1st day of December, 1998 between the Magerko Corporation, a Pennsylvania corporation, having its principal office 4121 Washington Road, McMurray, Pennsylvania 15317 (hereinafter called "Owner"), and Railcorp, Inc. (hereinafter called "Contractor") having a mailing address of: 1550 North Bailey Road, North Jackson, Ohio, 44451 (330) 538-2261

for the provision of labor and materials required for certain construction or repairs described as follows:

Description of Work: (hereinafter collectively called the "Work")

Rehabilitate 2.300' of Railroad Track per Railcorp, Inc. Proposal Number 11-98-R156

Description of Premises: (hereinafter called the "Property")

84 LUMBER COMPANY

1120 Lima Avenue, Findlay, Ohio, 45840

THE PARTIES AGREE AS FOLLOWS

1. Warranty.

The Contractor warrants to the Owner that the performance of the Work will be of good quality, free from fault and defects. The Contractor hereby grants to Owner an unconditional guarantee of performance of Contractor's obligations hereunder, and if, within one year from the date of completion of the Work, any of the Work is found to be defective, the Contractor shall correct it promptly upon receipt of Owner's written notice to do so. Correction of such conditions, whether discovered before or after completion of the Work, shall be made at the sole cost of the Contractor, including the cost of uncovering and replacing all materials and work furnished or performed by others and damaged by such removal or correction. If the Contractor defaults in the obligations hereunder, the Owner may, without prejudice to any other remedies it may have, make good such conditions and charge the cost of correction to the Contractor as an offset; if payments then or thereafter due are insufficient to cover corrective costs, the Contractor shall promptly pay the difference to the Owner upon demand, together with interest thereon at the rate of 18 % per annum or the highest rate permitted by law, whichever is lower (the "Default Rate"). The Contractor shall pay all of Owner's attorney's fees in collecting such sums due.

2. Owner's Duties.

a. The Owner shall pay the Contractor for the performance of the Work, the contract price, subject to the adjustments herein provided, as set forth on the following schedule:

Total Fixed Price: \$46,538.00

Payment Schedule: (30) Thirty Days Upon Completion

b. The Contractor warrants that title to all Work covered by an application for payment, whether incorporated in the Work or not, will pass to Owner upon receipt of such payments by the Contractor, free and clear of all liens, claims, security interest or other encumbrances, and the Contractor agrees to indemnify and hold the Owner harmless from any and all damages, costs, expenses and attorney fees which the Owner may suffer or incur as a result of any lien, claim, security interest or other encumbrance asserted against the Owner or the Property under construction.

c. The Owner may decline to approve an application for a progress payment and may withhold any part thereof to the extent necessary reasonably to protect the Owner if the Owner determines that any condition of the Contract remains unfulfilled or is violated by the Contractor including subsequently discovered evidence of prior conduct or neglect by the Contractor in the performance of the Work and compliance with terms of this Contract. Examples of cause for withholding payments include, but are not limited to: defective Work not remedied, third party claims filed or reasonable indications of probable filings, failure of Contractor to pay subcontractors for labor, materials or equipment or to withhold lawful deductions, reasonable doubt that the Work can be completed for the unpaid balance of the Contract price or within the time for performance, damage to another Contractor or third party, and unsatisfactory prosecution of the Work by the Contractor or subcontractor.

3. Liquidated Damages.

Contractor covenants and agrees that it will complete the Work within 25 working days of the date of commencement specified in the Notice to Commence. If Contractor has not completed the Work by such date, Owner shall be entitled to liquidated damages in the amount of \$100 per day for each day beyond the scheduled completion date until the Work is completed to Owner's satisfaction. Such liquidated damages will be deducted by Owner from any payment due Contractor, or if no payment is due or such payment is less than the liquidated damages, Contractor shall immediately pay to Owner such amount together with interest thereon at the Default Rate. Owner and Contractor agree that Owner's damages resulting from Contractor's breach of this paragraph will be difficult to determine within a reasonable period of time, therefore liquidated damages as specified above is an appropriate method for calculating Owner's damages.

4. Basic Obligations.

The Contractor shall provide and pay for all labor, incidental materials, construction equipment, tools, machinery, local transportation and other facilities and services necessary for the proper execution and completion of the Work in a safe and workmanlike manner.

The Contractor warrants that it has performed all such investigations of site conditions and other matters that are or may be pertinent to the performance of the Work as the Contractor has deemed appropriate in its own interest, and that, without regard to the sufficiency of such investigations, Contractor hereby undertakes all risks of increased costs, difficulty or impossibility of performance caused by such conditions, whether known or unknown to Owners. Contractor further warrants that the amount payable to Contractor has been established with this provision in mind, and that is adequate, in Contractor's estimation, to cover any and all unanticipated or undiscovered site or other conditions affecting the Work.

5. Administration.

a. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (1) all employees of the Contractor or any subcontractor and all other persons who may be affected thereby; (2) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his subcontractors; and (3) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

b. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

6. Indemnification.

a. In performance of the Work, the Contractor agrees to indemnify, protect, save harmless and defend the Owner, its agents and employees from and against all loss, cost damage and expense, including costs and attorney's fees and all claims and demands thereof, whether with or without merit, for damages because of bodily injury, sickness, disease or death at any time resulting therefrom sustained by any person or persons, including employees of the Contractor or on account of damage to property including the loss of use thereof, resulting from, arising out of or caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

b. In any and all claims against the Owner, or any of its agents or employees by any employee of the Contractor, a subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this provision shall not be

limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits acts. The Contractor for itself, its heirs, successors and assigns, hereby expressly agrees to waive any provision of the Workmen's Compensation Laws of any state whereby Contractor could preclude its joinder as an additional defendant or avoid liability for damage contribution or indemnity in any action of law, or otherwise where Contractor's employee or employees, heirs, assigns, or anyone otherwise entitled to receive damages by reason of injury or death brings an action at law against the Owner.

c. It is the intent of this provision to absolve and protect the Owner, its agents and employees from any and all liability and loss resulting from or arising out of operations of Work performed by the Contractor, its agents, employees, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and the Owner, its agents and employees, and either caused (i) solely by the Owner, its agents employees or others, except where prohibited by law; (ii) solely by the Contractor, its agents, employees or others or (iii) jointly by the Contractor, its agents, employees or others and the Owner, its agents, employees or others.

7. Contractor's Duties.

The Contractor shall supervise and direct the work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract. The Contractor shall be responsible to the Owner for the acts and omissions of all his employees and all subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with the Contractor. The Contractor shall comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work.

8. Removal of Debris.

The Contractor at all times, shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work, he shall remove all his waste materials and rubbish from and about the Property as well as all his tools, construction equipment, machinery, and shall leave the Work "broom clean" or its equivalent, except as otherwise specified. If the Contractor fails to clean up, the Owner may do so and the cost thereof shall be charged to the Contractor. If a dispute arises between the separate contractors as to their responsibility for cleaning up as required herein, the Owner may clean up and charge the cost thereof to the several contractors, as it shall determine to be just.

9. Insurance.

Contractor shall provide workmen's compensation insurance covering its employees, or adequate employer's liability insurance in amounts required to fulfill the terms of this Contract and as provided by law. Contractor shall also provide public general liability insurance with limits not less than \$1,000,000 in the aggregate covering personal injury, bodily injury, death or property damage suffered by anyone other than employees of Contractor during the Course of and on the site of the operations covered by this Contract, and shall furnish Owner with a certificate of the insurance company issuing such insurance policies which certified that the Contractor has the required coverages in force at all relevant times. Such certificate shall name The Magerko Corporation as an additionally insured party and shall state that such insurance policy may not be canceled without 30 days notice to the Owner.

10. Waiver of Liens.

If permissible under local law, Contractor hereby waives all of its now existing or future right or rights to file a lien upon the Property for any work or material supplied by Contractor or any subcontractor or materialmen engaged by Contractor. Upon each payment by Owner, Contractor will execute an unconditional release of liens, in a form approved by Owner, releasing all of Contractor's rights to file a lien against Owner or the Property.

11. Termination of Contract.

Owner shall at any time have the right to terminate this Contract and its obligations hereunder, if in Owner's sole judgment, Contractor has not performed its obligations hereunder within the time period specified in this Contract and in a manner and of a quality acceptable to Owner. Upon such termination, Owner shall have no further liability to Contractor for any additional work or materials. Contractor shall immediately leave the Property upon such termination and remove all of its tools, debris and equipment. Upon such termination, the Contractor's warranty set forth in paragraph one shall automatically commence and remain in full force and effect for the one-year period following the date of termination.

12. Change Orders.

The Contractor shall not commence work on any change orders or other modifications to the plans and specifications without the prior written consent of Owner in each instance. If Owner requests a change in the scope of the Work (an "Extra") it shall request such change in writing to Contractor. Within 5 days after such request, Contractor shall submit to Owner its written fixed price bid for such Extra. If Owner approves such bid, Contractor may begin work on such Extra. Contractor acknowledges and agrees that all Extras must be approved in writing by Owner prior to the commencement of Work. No verbal instruction, authorizations or directions given by Owner or any of its employees, agents, contractors or consultants shall be binding upon Owner. Contractor must rely exclusively on Owner's written authorization to proceed with any Extra.

CONTRACTOR HEREBY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS PARAGRAPH 12 AS EVIDENCED BY ITS INITIALS.

ERK

(Initial here)

IN WITNESS WHEREOF, the undersigned parties have hereunto set their hands the day and year first above-written.

OWNER:

THE MAGERKO CORPORATION

CONTRACTOR:

By: _____

Title: DIRECTOR OF CONSTRUCTION AND DEVELOPMENT

RAILCORP, INC.

Name of Company or Individual

By: Edward R. Kennedy

Title: GENERAL MANAGER

Print Name: EDWARD R. KENNEDY

Federal Tax I.D. # 34-154-6678



Norfolk Southern Corporation
Industrial Development Department
100 E. Campus View Blvd.
Suite 180
Columbus, Ohio 43235
614 438-6939 FAX

Gerald A. Leimbach
Industrial Development Manager
614 438-6913

October 30, 1998

Via Facsimile

Mr. Russ Kathrein, Vice-President-Dev.
84 Lumber Company (Development Corp)
P. O. Box 8484
Eighty-four, Pennsylvania 15330

Dear Mr. Kathrein:

This has reference to conversations with Jim Zaunick of 84 Lumber, Duane Kuzak of Raven Logistics, and Jack Arnett of Ohio Track regarding 84 Lumber's interest in a parcel of land in Findlay, Ohio, adjacent to our siding that served Great Lakes Sugar.

On Thursday, October 22, I and other Norfolk Southern personnel met with Duane Kuzak and Jack Arnett to discuss the project. Our meeting led to the following:

1. Norfolk Southern would own and maintain the track from the P.S.(point-of-switch) to the existing derail.
2. Norfolk Southern would sell to 84 Lumber approximately 2800 feet of track from the derail to a point at approximately where the overhead power lines cross the track. Sale price for the track, \$5500.
3. 84 Lumber would be responsible for rehabilitating the purchased track, subject to our approval and future maintenance. As information, our Division Engineer recommends installing heavier rail; however, this is not mandatory.
4. 84 Lumber would sign our standard operating and maintenance agreement(Siding agreement) prior to the commencement of service over the track. A sample copy will be furnished for your review.

Please let me know if you will proceed with the project on the above basis and I will furnish a more formal agreement. If you have any questions, call me.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Gerald A. Leimbach', written over a horizontal line.
Gerald A. Leimbach
Industrial Development Manager

GAL/sds
Attachment

cc: Duane Kuzak

FROM :

PHONE NO. :

Mar. 05 1999 08:30AM P1



Mr. Kennedy.

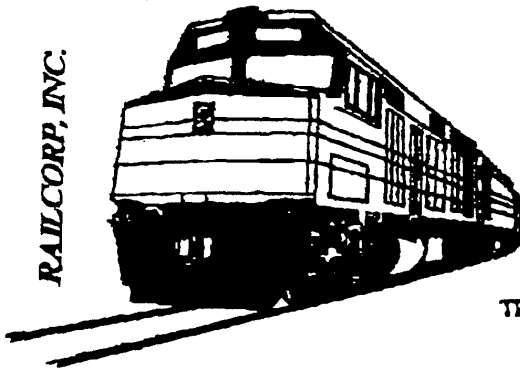
The track at 84 Lumber in Findlay Ohio
has been checked and OK for service.

Thank you

Steve Chandler Norfolk Southern Railway Corp.

419-222-7741

RAILCORP, INC.



RAILCORP, INC.

1550 North Bailey Road
North Jackson, Ohio 44451
Phone: (330) 538-2261
Toll Free: (800) 788-2264
Fax: (330) 538-2223

TRACK CONSTRUCTION • ENGINEERING • MAINTENANCE

fax transmittal

to: Steve Thompson
84 Lumber Company

fax #: 724-942-0730

from: Ed Kennedy

date: March 16, 1999

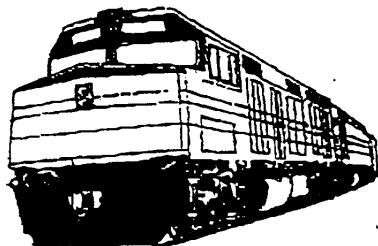
subject: Norfolk Southern Approval

pages: This is page 1 of 2 page(s)

Notes:

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (800) 788-2264.

RAILCORP, INC.



FILE RAILCORP, INC.

1550 North Bailey Road
North Jackson, Ohio 44451
Phone: (330) 538-2261
Toll Free: (800) 788-2264
Fax: (330) 538-2223

TRACK CONSTRUCTION • ENGINEERING • MAINTENANCE

January 29, 1999

INVOICE NO

99-042

983156

84 Lumber Company
4121 Washington Rd.
McMurray, Pennsylvania 15317

Attn: Mr. Stephen Thompson
Purchasing Agent

Ref: Railroad Track Work, 84 Lumber Co. Findlay, Ohio Facility - Job # 8764

Gentlemen:

Please accept this as our invoice for the following railroad track work performed:

- I. Rehabilitate Approximately 2,300' of Railroad
- A. Replaced 1,032 cross-ties with good relay 6" x 8" x 8' x 6" cross-ties, furnishing new track spikes.
 - B. Performed the remainder of our work per our proposal # 11-98-R156

AMOUNT REQUESTED THIS INVOICE \$44,072.00

Terms: Net 30 Days

We wish to thank you for allowing us the opportunity of working with your company on this project.

Very Truly Yours,
RAILCORP, INC.

Edward Kennedy
Edward Kennedy

ERK/cic

9620-5273
\$34,072.00
577-2/16/99

2/5/99
approved for
\$34,072.00
until inspection
is completed

02/05/99 10:04

TX/RX NO.9051

P.003

PURCHASE ORDER

Send all Invoices and Correspondences to:
THE MAGERKO CORPORATION
 4121 WASHINGTON ROAD
 McMURRAY, PA 15317
 (724) 941-8497

VENDOR:

Railcorp, Inc.
 1550 North Bailey Road
 North Jackson, Ohio 44451
 330-538-2261

STORE: Findlay, OH

JOB #: 8764

JOB: Rehabilitate Approx. 2300' of Railroad Track

*****IMPORTANT*****
 Our Purchase Order No. must Appear on
 Packing Slips, Bills of Lading and All
 Other Correspondence.

Purchase Order No.	Original P.O. Date
8764-0019	12/1/98
☒ Original P.O.	☒ Date Revised
☐ Revised P.O.	
☐ P.O. Approved for Payment	
☒ P.O. Approved for Partial Payment	

SPECIAL INSTRUCTIONS:

Terms:

Start Date: 12/14/98
Prop.Finish: 1/8/98

Ship Via:

FOB:

Vendor Reference:
Proposal 11-98-R156

ACCOUNT CODE	ITEM NUMBER	QUANTITY RECEIVED	QUANTITY ORDERED	UNIT TYPE	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
9620	1	1	1	Job	Rehabilitate Approximately 2300' of Railroad Track	\$46,588.00	\$46,588.00
					A. Replace 1100 defective cross-ties with good relay 6x8x6 cross-ties, furnishing new track spikes		
					B. Check track gauge from the existing dail to the track's end. Re-gauge where necessary.		
					C. Tighten loose track bolts and replace 200 defective bolts with new track bolts with lock washers.		
					D. Furnish and install 350 net tons of new ballast.		
					E. Raise, machine power tamp and dress to proper profile.		
					F. Furnish and install one each set of relay wheel stops at the track's termination point		
					Notes:		
					1. Defective rail will be replaced with existing excess rail.		
					2. All defective cross-ties will be stacked neatly on site.		
					3. Add \$5,700 to have old cross-ties hauled off site.		
					4. Price includes removing dirt from one 40' road crossing.		
					5. Deduct \$37.00 for each cross-tie that is not furnished and installed. 6. One year guarantee on workmanship.		
					SUBTOTAL		\$46,588.00
					TAX		
					TOTAL PURCHASE PRICE		\$46,588.00

The above PO represents an agreement between Magerko Corporation and the Vendor for a specific quantity and price of materials and/or services. Any variation must be approved in writing by Magerko Corp. in order for payment to be made.

BY

Purchasing Agent

1 of 1

FINAL WAIVER OF LIENS

STATE OF: Ohio)
COUNTY OF: Mahoning)SS

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by 84 Lumber Company
To furnish railroad track work
For the premises known as 1120 Lima Avenue
Of which the Magerko Corporation is the owner.

The undersigned, for and in consideration of forty-four thousand eight hundred twenty-two
(\$ 44,822.00) Dollars, and other valuable consideration, the receipt whereof is hereby
acknowledged, do(es) hereby waive and release any and all lien or claim of, or right to, lien, under the
statutes of the State of Ohio, relating to mechanics' liens, with respect to and on said above-
described premises, and the improvements thereon, and on the materials, fixtures, apparatus, or machinery
furnished, and on the moneys, funds, or other consideration due or to become due from the owner, on
account of labor services, materials, fixtures, apparatus or machinery furnished to this date by the
undersigned for the above-described premises.

Signed this _____ day of _____, 19____.
Witness: _____ Signature: _____
Subscribed and sworn to before me this _____ day of _____, 19____.

NOTE: All waivers must be for the full amount paid. If waiver is for a corporation, corporate name should
be used, corporate seal affixed and title of officer signing waiver should be set forth; If waiver is for a
Partnership, the partnership name should be used, partner should sign and designate himself as partner.

CONTRACTOR'S AFFIDAVIT

DAN DOYLE

The undersigned, being duly sworn, deposes and says that s/he is Edward Kennedy (name)
Of Railcorp Inc (company) who is the contractor
For the railroad track construction (work) at
1120 Lima Avenue Findlay, Ohio (Construction site) owned by
84 LUMBER COMPANY; that the total amount of the contract, including extras, is \$ 44,822.00
on which s/he has received payment of \$ 34,072.00 prior to this payment; that all waivers of
lien provided by the contractor are true, correct and genuine and delivered unconditionally and that there is
no claim either legal or equitable to defeat the validity of said waivers; that the following are the names of
all parties who have furnished material or labor, or both, for said work and all parties having contracts or
subcontracts for specific portions of said work or for material entering into the construction thereof and the
amount due or to become due to each, and that the items mentioned include all labor and material required
to complete said work according to plans and specifications:

Name	Work Performed	Contract Price	Amount Paid	This Payment	Balance Due
<u>Railcorp Inc</u>	<u>Track</u>	<u>44,822.00</u>	<u>34,072.00</u>	<u>—</u>	<u>10,750.00</u>
<u>National Lime + Stone</u>		<u>1,278.14</u>			
<u>WD Tire Sales</u>		<u>7,050.00</u>			
<u>Kovalechak Corporation</u>		<u>750.00</u>			

That there are no other contracts for said work outstanding, and that there is nothing due or to become due
to any person for material, labor or other work of any kind done or to be done upon or in connection with
said work other than as above stated.

Signed this 23rd day of March, 19 99
Witness: Joline Menning Signature: Dan Doyle
Subscribed and sworn to before me this 23rd day of March, 19 99

JOLINE MENNING, Notary Public
State of Ohio

FINAL WAIVER OF LIENS

STATE OF: Ohio)
COUNTY OF: Mahoning) ss

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by 84 Lumber Company
To furnish railroad track work
For the premises known as 1120 Lima Avenue is the owner.
Of which the Magerko Corporation
The undersigned, for and in consideration of forty-four thousand eight hundred twenty-two
(\$ 44,822.00) Dollars, and other valuable consideration, the receipt whereof is hereby
acknowledged, do(es) hereby waive and release any and all lien or claim of, or right to, lien, under the
statutes of the State of Ohio, relating to mechanics' liens, with respect to and on said above-
described premises, and the improvements thereon, and on the materials, fixtures, apparatus, or machinery
furnished, and on the moneys, funds, or other consideration due or to become due from the owner, on
account of labor services, materials, fixtures, apparatus or machinery furnished to this date by the
undersigned for the above-described premises.

Signed this _____ day of _____, 19____.
Witness: _____ Signature: _____
Subscribed and sworn to before me this _____ day of _____, 19____.

NOTE: All waivers must be for the full amount paid. If waiver is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing waiver should be set forth; If waiver is for a Partnership, the partnership name should be used, partner should sign and designate himself as partner.

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DAN DOYLE

The undersigned, being duly sworn, deposes and says that s/he is Edward Kennedy (name)
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no claim either legal or equitable to defeat the validity of said waivers; that the following are the names of
all parties who have furnished material or labor, or both, for said work and all parties having contracts or
subcontracts for specific portions of said work or for material entering into the construction thereof and the
amount due or to become due to each, and that the items mentioned include all labor and material required
to complete said work according to plans and specifications:

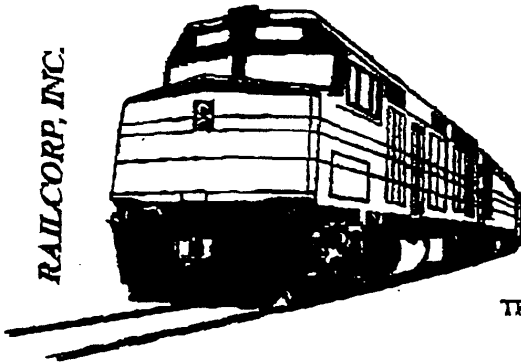
Name	Work Performed	Contract Price	Amount Paid	This Payment	Balance Due
<u>Railcorp Inc</u>	<u>Track</u>	<u>44,822.00</u>	<u>34,072.00</u>	<u>-</u>	<u>10,750.00</u>
<u>National Lime + Stone</u>		<u>1,278.14</u>			
<u>WD Tie Sales</u>		<u>7,000.00</u>			
<u>Kovalchak Corporation</u>		<u>750.00</u>			

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than as above stated.

Signed this 23rd day of March, 1999
Witness: Jolene Menning Signature: Dan Doyle
Subscribed and sworn to before me this 23rd day of March, 1999

JOLENE MENNING, Notary Public
State of Ohio
My Commission Expires Feb. 26, 2002

RAILCORP, INC.



RAILCORP, INC.

1550 North Bailey Road
North Jackson, Ohio 44451
Phone: (330) 538-2261
Toll Free: (800) 788-2264
Fax (330) 538-2223

TRACK CONSTRUCTION • ENGINEERING • MAINTENANCE

fax transmittal

to: Steve Thompson
84 Lumber Company

fax #: (724) 228-2630

from: Dan Doyle

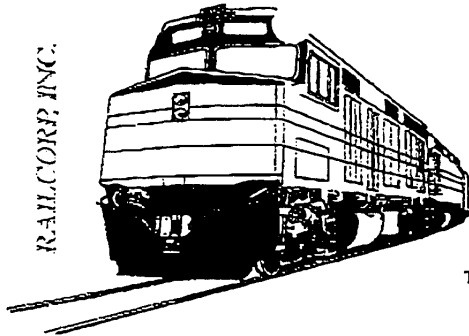
date: March 23, 1999

subject: Waiver of Liens

pages: This is page 1 of 2 page(s)

Notes:

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RAILCORP, INC.

1550 North Bailey Road
North Jackson, Ohio 44451
Phone: (330) 538-2261
Toll Free: (800) 788-2264
Fax: (330) 538-2223

TRACK CONSTRUCTION • ENGINEERING • MAINTENANCE

December 1, 1998

PROPOSAL NUMBER

11-98-R156

84 Lumber Company
4121 Washington Road
McMurray, PA 15317

Ref: Railroad Track Rehabilitation, 84 Lumber
Facility, Findlay, OH

Attn: Mr. Russ Kathrein
Vice President of Development

Base Bid: \$46,588.00

Dear Mr. Kathrein:

Thank you for inviting Railcorp, Inc. to bid on this project. We are pleased to offer the following proposal:

I. Rehabilitate Approximately 2,300' of Railroad Track

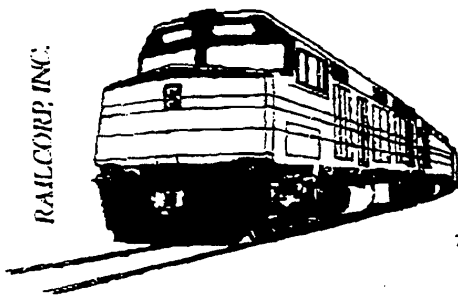
- A. Replace 1,100 defective crossties with good relay 6" x 8" x 8' x 6" crossties, furnishing new track spikes.
- B. Check track gauge from the existing derail to the track's end. Re-gauge where necessary.
- C. Tighten loose track bolts and replace 200 defective bolts with new track bolts with lock washers.
- D. Furnish and install 350 net tons of new ballast.
- E. Raise, machine power tamp and dress to the proper profile.
- F. Furnish and install one each set of relay wheel stops at the track's termination point.

Total Cost Item I \$46,588.00

Notes:

- 1. Defective rail will be replaced with existing excess rail on site.
- 2. All defective crossties will be stacked neatly on site.
- 3. In the event that you wish to have the old crossties hauled off site, add \$5,700.00.
- 4. Our price also includes removing dirt from one 40' road crossing.
- 5. Deduct \$37.00 for each crosstie that is not furnished and installed.
- 6. Workmanship is guaranteed for one year from date of track acceptance.
- 7. Railcorp, Inc. would not be responsible for broken rails caused by normal wear and tear.

RAILCORP, INC.



RAILCORP, INC.

1550 North Bailey Road
North Jackson, Ohio 44451
Phone: (330) 538-2261
Toll Free: (800) 788-2264
Fax: (330) 538-2223

TRACK CONSTRUCTION • ENGINEERING • MAINTENANCE

February 5, 1999

PROPOSAL NUMBER
02-99-R028

84 Lumber Company
4121 Washington Road
McMurray, Pa 15317

Ref: 84 Lumber Co. Findlay, Ohio Facility

Attn: Mr. Steve Hobba
Project Manager

Base Bid: As Listed

Gentlemen:

Please consider this as our proposal for additional railroad track work:

I. Gauge Rods - 25 Each

A. N & S Corporation has requested 25 gauge rods be installed on the track.

\$750⁰⁰

Total Cost Item I *\$1,100.00*

II. Ties For Unloading Dock

A. Furnish and install 28 Relay crossies.

B. Drill 60 holes and make necessary cuts.

C. Furnish and install 30 nuts and washers.

\$1,000⁰⁰
+ MATERIAL

Total Cost Item II *\$2,700.00*

Total Cost Items I & II **\$ 3,800.00**

We wish to thank you for allowing us the opportunity of submitting our proposal on this project and hope that it meets with your approval. If you have any questions, please contact me at (800) 788-2264.

Very Truly Yours,
RAILCORP, INC.

Edward Kennedy
Edward Kennedy
Project Manager