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7 January 2004

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

209820

Re: City of Lincoln -- Petition for a Declaratory
Order, F.D. 34425
Due January 8, 2004

Dear Mr. Williams:

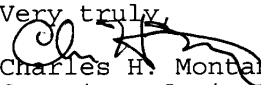
Enclosed for filing on behalf of City of Lincoln please find an original and ten copies of a Rebuttal to comments filed by Lincoln Lumber and by certain other commenters in this proceeding. City of Lincoln reserves the right to respond further to any additional material filed in this proceeding by other parties or commenters after December 29, 2003 (the due date for replies to City's Petition).

Please return the extra copy of this letter after date-stamping, so I may verify receipt for my records. A stamped, self-addressed envelope is enclosed for that purpose.

ENTERED
Office of Proceedings

JAN - 8 2004

Part of
Public Record

Very truly,

Charles H. Montange
for City of Lincoln

w/encls.

cc. counsel, per cert. of service (w/encls)
Joel Pedersen, Esq. (City of Lincoln) (w/encls))

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket 34425

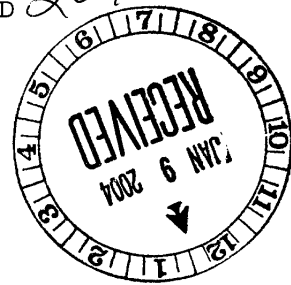
CITY OF LINCOLN --
PETITION FOR A DECLARATORY ORDER

CITY OF LINCOLN'S
REBUTTAL TO
LINCOLN LUMBER COMPANY'S
REPLY IN PARTIAL OPPOSITION

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This is City of Lincoln's rebuttal to the "reply in partial opposition" filed by Lincoln Lumber Company (LLC) on December 29, 2003, to City of Lincoln's Petition for A Declaratory Order.

LLC owns a five block long (19th to 24th Streets) railroad corridor which for practical purposes is 100 feet wide throughout its length. City of Lincoln desires to construct an underground storm sewer improvement in the corridor to prevent flooding, and also to secure a twenty foot corridor for a bicycle commuter and pedestrian trail facility in four blocks of the corridor (between 19th Street and 23d Street).¹ LLC refused to negotiate the sale of interests sufficient for either purpose unless the City completely gave up on any trail. LLC through its attorneys indicated that it would assert a federal preemption defense to any eminent domain proceeding brought by the City to secure the interests necessary for a

¹ Lincoln plans to employ an alley on the north side of LLC's property between 23d and 24th Streets.

storm sewer and trail. City responded with the petition for a declaratory order from which this proceeding arises.

I. LLC Does Not Oppose the Petition as to the Storm Sewer

In its Reply to City's Petition, LLC indicates that it does not oppose the relief sought by City in connection with the storm sewer. LLC Reply at 3. Thus, City is entitled to an order sufficient to permit City to exercise eminent domain to acquire the property interests necessary for the underground sewer facility.² The remainder of this Rebuttal will be devoted to LLC's position with respect to the trail. As indicated below, LLC's position is a moving target.

II. LLC's Most Recent Flip-Flop on the Husker Link Trail

² Mr. Daniel LaKemper filed "Comments" on behalf of Arkansas-Oklahoma Railroad, Inc., Pioneer Railcorp, Minnesota Commercial Railway Company, and Small Railroad Business Owners of America which seem to oppose all aspects of Lincoln's petition, even as to the storm sewer. Since there is no showing that any of Mr. LaKemper's clients have any operations in the City of Lincoln, or are customers or suppliers of LLC, it is clear that none of Mr. LaKemper's clients have standing for judicial review purposes. Moreover, none display any familiarity with the underlying facts of this case. While the City understands that this Board's practice is to entertain the comments of entities and individuals even if they have no interest, City reserves the right to challenge the standing of all of Mr. LaKemper's clients in the event of judicial review.

To the extent Mr. LaKemper's clients oppose use of eminent domain, they do so on the ground that local railroads should always be exempt from all state and local regulation regardless of lack of effect on discharge of common carrier obligations. With respect, that position overlooks the fact that the focus of STB regulation is on economic issues germane to discharge of the common carrier obligation. We do not understand that the STB has ever taken the position that its limited focus secures a state of lawlessness on all other parameters for the railroads it regulates. There is certainly no reason to assert that state or local eminent domain is barred even when it does not interfere with discharge of common carrier obligations.

In its initial filings with this Board, LLC clearly stated that it no longer opposed either the underground storm sewer, and that it would not oppose the trail between 19th Street and 22d Street so long as the trail were located on the north side until its point of crossing at 19th Street.³ As City indicated at the time, the City is amenable to locating the trail on the northernmost 20 feet of the rail corridor from 19th Street all the way to 23d Street, with a point of crossing at 19th Street. City also will provide a fence separating its property from that of LLC, and will pay for the crossing.⁴

However, in LLC's Reply filed December 29, LLC flip-flops, stating that it now opposes any trail facility, even between 19th and 22d Streets, because City also seeks a trail facility from 22d Street to 23d Street. LLC Reply at 3.

III. LLC's "Conspiracy Theory" Argument

LLC's main argument (at least it is LLC's first point) is the ludicrous assertion that Lincoln's Petition is some kind of insidious plot by Rails to Trails Conservancy (RTC), a national trail organization. For example, LLC states in that "[a]lthough ... filed nominally by a municipality, there is little doubt that the national trail organization is behind it." LLC Reply at p. 1, 3d ¶. LLC goes on to conjure that RTC

³ Letter, T. McFarland (for LLC) to V. Williams, dated Nov. 18, 2003 (entered into public record in this proceeding on Nov. 19, 2003).

⁴ See Rebuttal Verified Statement of Terry Genrich ¶ 2 (reiterates City's agreement to northernmost 20 feet and a crossing at 19th Street).

surreptitiously is trying to upset some kind of legislative formulation and is "invit[ing] ... this Board to thwart the will of the United States Congress" through Lincoln's petition. See LLC Reply at 1-2.

LLC's version of conspiracy theory is nothing more than unsupported polemics. First, Lincoln's Petition is Lincoln's petition, and RTC had nothing to do with it. Genrich Rebuttal V.S. at ¶ 1; Pedersen Rebuttal V.S. at ¶ 7. See also Letter, Marianne Fowler (RTC Vice President) to Mr. Dan Hamill (LLC), attached as Appendix F. Second, City of Lincoln neither is seeking itself, nor inviting this Board, to thwart the will of Congress. City of Lincoln is merely following established procedures to obtain this Board's authorization to employ state and local law eminent domain procedures to install important public improvements on a portion of railroad right of way unneeded for rail purposes. Accord, State of Texas, Department of Transportation -- Petition for Declaratory Order Regarding Highway Construction in Tarrant County, TX, ICC Finance Dkt. 32589, served Feb. 7, 1995 (authorizing use of state and local eminent domain to secure portions of railroad property for highway and sewer use).

Moreover, this Board, like its predecessor, has long entertained adverse abandonment proceedings of entire railroad corridors in order either to permit public improvements or to allow the legitimate application of state and local law, even over a railroad's objections. E.g., Conrail v. ICC, 29 F.3d 706

(D.C.Cir. 1994) (abandonment authorized over railroad's objection); Modern Handcraft, Inc., 363 ICC 969 (1981) (same). See also Tri-County Metropolitan Transp. District of Oregon--Abandonment --a Line of Burlington Northern Railroad Company in Washington County, OR, AB-6 (Sub-no. 348), served May 26, 1993 (transit agency files adverse abandonment application against unused freight rail line in order to lift preemptive federal rail jurisdiction so state eminent domain law may be applied). Lincoln's Petition is far less draconian than an adverse abandonment application aimed at an entire rail corridor.

In addition, STB has frequently exempted abandonments from OFA procedures in order to facilitate public and even private improvements. For example, in Norfolk & Western --Exemption-- in Cincinnati, Ohio, AB 289 (Sub-no. 184X), served May 13, 1998, STB granted an exemption from OFA provisions with respect to a rail line required by Cincinnati for purposes of urban renewal and a new football stadium, despite requests by bona fide shortline railroads for an opportunity to acquire the line by OFA. See also Grand Trunk Western Railroad -- Adverse Discontinuance -- in Cincinnati, OH, AB 31 (Sub-no. 30), served May 13, 1998 (same). Indeed, STB has exempted lines from OFA procedures where there was no bona fide rail need, simply to facilitate worthwhile private projects. Thus, in Missouri Pacific Railroad Company -- Exemption -- in Houston, TX, AB 3 (Sub-no. 139X), served December 31, 1996, STB exempted a stub-end line from OFA procedures in order to facilitate the

expansion of a private business (a warehouse). Lincoln did not seek an exemption here, because it (erroneously) believed it could work with LLC to develop a trail corridor in the right of way.

Because City of Lincoln is advised by its outside rail experts that its proposed uses of LLC rail corridor will not interfere with any reasonable rail need by LLC, City of Lincoln has no need to seek an adverse abandonment of LLC's common carrier obligations in order to permit the public improvements at issue here. Since LLC unreasonably declines to negotiate the sale of the requisite property, the appropriate relief is thus not an adverse abandonment application but instead a petition for a declaratory order, as employed by the State of Texas in F.D. 32589. There is nothing contrary to the will of Congress in following such well-established procedures in order to implement public improvements.

IV. LLC's Alleged "Fundamental Questions" Are Irrelevant Here

LLC alleges that there are three "fundamental questions of federal law" which the City has not addressed. If City has not heretofore addressed these "questions," it is because they are totally irrelevant.

LLC's first question is whether condemnation of property for public improvements constitutes an impermissible collateral attack on this Board's alleged "prior determination that LLC's [right of way] is not subject to trail use." LLC Reply at 3. LLC implies that this Board's administration of the OFA remedy

embodied in 49 U.S.C. § 10904 (under which LLC condemned the right of way) forever commits the entire property to LLC, unless LLC voluntarily relinquishes control.⁵ This is simply wrong. Nothing in § 10904 indicates that a line acquired under that section is any different from any other rail line subject to this Board's jurisdiction, for any purpose relevant here. The only possible conclusion is that a rail line acquired under § 10904 is no different from a rail line acquired under any other ICC or STB authority, insofar as its availability for use for public improvements is concerned.

A railroad may voluntarily transfer interests in any regulated rail lines (other than federally granted rail parcels) for any otherwise lawful public or private purposes, so long as the railroad can continue to discharge its common carrier

⁵ LLC cites this Board's decision in Union Pacific R.--Exemption -- in Lancaster County, NE, STB dkt. AB33 (sub-no. 112X), served Sept. 24, 1997, where this Board said that "if this line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use precluded." LLC Reply at 7. Clearly in context STB meant that "trail use procedures" embodied in 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 would not be applicable. This is made clear in the other quotations by LLC, in which LLC notes that OFA procedures take precedence to Trails Act procedures. LLC Reply at 7. But City of Lincoln is not seeking application of the Trails Act here. To the contrary, LLC states that it owns the rail property in question in fee simple (i.e., not as a rail easement), and City of Lincoln concurs that LLC holds the fee interest. In such circumstances, LLC clearly could voluntarily alienate the property for non-rail purposes, and certainly for any public highway type purposes such as trail, so long as this did not unreasonably interfere with discharge of common carrier rail obligations. Thus nothing precludes trail use of the premises, so long as discharge of common carrier obligations is not unreasonably impeded. Trails Act procedures are irrelevant here.

obligations. If the railroad refuses to negotiate a voluntary transfer, as LLC is undeniably is refusing here, and further asserts federal preemption as a defense to condemnation, then a local or state government wishing to pursue condemnation of the regulated rail property appropriately seeks authorization either by adverse abandonment application (if discharge of common carrier obligations will be precluded) or by petition for a declaratory order (if such discharge will not be precluded).

City of Lincoln is thus not collaterally attacking this Board's prior determination in connection with the OFA. City of Lincoln is merely following appropriate procedures to secure property interests for needed public improvements which are unneeded for discharge of common carrier obligations.

LLC's second question is whether such condemnation "would unduly burden interstate commerce by impinging on LLC's right to exclusive use of the full width of its operating [right of way]." One dispositive answer to LLC's second question is that it is completely misstated. The real question is whether the condemnation unreasonably impinges on discharge of common carrier obligations. That is the crux of STB regulation of the corridor, as indicated in the rail policies adopted by Congress and codified at 49 U.S.C. § 10101. If the condemnation does not unreasonably impinge on discharge of the common carrier obligation, then it has no burden on interstate commerce insofar

as relevant here.⁶

Any property owner has the right to exclusive use of that which it owns in fee, but that ownership in general is subject to involuntary alienation through adverse possession or eminent domain. This in the abstract is hardly unconstitutional, as applied to any landowner, railroad or otherwise. The Supreme Court has approved the use of state law eminent domain remedies against railroad property (subject to an appropriate determination by ICC/STB) in Hayfield Northern R.R. v. Chicago & N.W., 467 U.S. 622 (1984). Moreover, under the law of many states, adverse possession claims can mature against those portions of rail corridors (other than federally granted railroad parcels) unused by operating railroads. E.g., Read v. Montgomery County, Maryland, Md. Ct. Special Appeals No. 757, decided May 11, 1994 (adverse possession against CSX for portions of sides of a 66 to 90 foot wide railroad corridor in Bethesda and Silver Spring, Maryland). In short, there is no "Commerce Clause" issue with respect to involuntary acquisition procedures involving rail property, so long as ability to discharge the federally-regulated common carrier obligation is not impinged. City of Lincoln is simply attempting to employ

⁶ If exclusive use of a rail corridor is necessary to avoid burdening interstate commerce, then the railroads of the United States have engaged in many unconstitutional contracts by selling, leasing, or otherwise transferring interests in their rail corridors for utility use, parking lots, and myriad other non-rail activities. Indeed, LLC would have acted unconstitutionally under the theory it advances in its brief in leasing most of its corridor to the Cushman division of Textron.

correct procedures to acquire the northernmost 20 feet of the 100 foot wide rail corridor from 23d Street to 19th Street through use of eminent domain. City of Lincoln will pay the judicially-determined and constitutionally required level of compensation.

In its Reply at p. 8, LLC cites Midland Valley R. Co. v. Sutter, 28 F.2d 163 (1928). This case appears to hold that in certain states or in certain circumstances, railroad easement ownership, like fee ownership, accords an owner exclusive rights to the surface estate. However, this does not prevent a state or local government from employing eminent domain to secure a portion of a parcel of land owned by a railroad for a public improvement, including in particular use for public highway purposes. Indeed, federally granted railroad rights of way, which under federal law are restricted to railroad use, by statute may be employed for public highway (including trail) purposes. 43 U.S.C. § 913 as modified by 23 U.S.C. § 312 and 43 U.S.C. § 912 as modified by 16 U.S.C. § 1248(c).

If the rail parcel (whether held as fee or easement) is subject to this Board's jurisdiction, then the state or local government must be prepared to obtain from this Board authorization to employ eminent domain, should the railroad owning the parcel refuse to negotiate a voluntary transaction. In that event, the issue is whether the property is or is not reasonably needed for discharge of common carrier rail

obligations.⁷

LLC effectively admits that City's acquisition of property interests needed for the storm sewer will not unreasonably interfere with discharge of common carrier rail obligations. LLC Reply at 3. LLC similarly has previously conceded that the City's acquisition of the interests needed for a trail will not interfere with discharge of common carrier rail obligations between 19th and 22d Streets.⁸ Although LLC now purports to retract that concession (LLC Reply at 3), City has shown that LLC has already alienated its interests in the property in question to Textron for uses far more onerous than anything proposed by City in connection with a trail⁹, or, alternatively, has been using the property in question for non-

⁷ Northern Pacific Railroad Company v. Smith, 171 U.S. 260 (1898), cited by LLC in its Reply at 9, and Northern Pacific Ry Co. v. Townsend, 190 U.S. 267 (1903), are simply not applicable. Northern Pacific involved federally-granted right of way. As noted, under federal statutes, federally-granted railroad right of way may only be transferred for public highway purposes prior to a judicial declaration of abandonment. E.g., 43 U.S.C. § 912, as modified by 16 U.S.C. § 1248(c), and 43 U.S.C. § 913, as amended by 23 U.S.C. § 312. The parcels in question in this proceeding are not federally granted railroad right of way. See Rebuttal Verified Statement of Joel Pedersen, attached as App. B, at ¶ 2. In any event, bicycle and pedestrian trails are normally considered public highway uses. E.g., Mauler v. Bayfield County, 309 F.3d 997 (7th Cir. 2003) (and cases cited). Finally, Mr. Pedersen, as a Nebraska law expert, has concluded that there are no restrictions under Nebraska law prohibiting the City of Lincoln from acquiring the interests in LLC property which the City of Lincoln seeks. Pedersen Rebuttal V.S. at ¶ 2.

⁸ See note 3 supra (LLC letter to STB, dated Nov. 18, 2003).

⁹ See Textron (Cushman) lease attached to Pedersen Verified Statement, filed with City's Petition and discussion therein at pp. 10-11.

rail purposes.¹⁰ Moreover, LLC by its own admission (Exhibit G to Hamill Verified Statement attached to LLC Reply) has told the City that it intended to use the northernmost portion of the right of way to put buildings on, and that it intended to shift its rail facilities to the south side of the right of way. See also Rebuttal V.S. of Terry Genrich ¶ 3 (Appendix C hereto).

LLC's final question is whether such condemnation would be federally preempted under 49 U.S.C. § 10501(b) as state regulation of rail transportation. LLC is engaging in a useless circularity. Use of eminent domain by the City clearly would not be federally preempted under 49 U.S.C. § 10501(b) if this Board grants City's Petition. That is why the City of Lincoln has filed this Petition. If LLC means to imply that this Board lacks authority to authorize involuntary acquisition of rail property under state or local law, then LLC is simply wrong. E.g., Conrail, supra, 29 F.3d 706; Modern Handcraft, Inc., supra, 363 ICC 969; State of Texas, Department of Transportation -- Petition for Declaratory Order Regarding Highway Construction in Tarrant County, TX, supra, F.D. 32589.¹¹

V. LLC's Unsuccessful Attempt to Distinguish the Texas Case

LLC seeks to distinguish State of Texas, supra, on several

¹⁰ See Lincoln Petition and Schuchmann Verified Statement attached thereto.

¹¹ Cases like Michigan Southern R. Co. v. City of Kendallville, 251 F.3d 1152 (7th Cir. 2001), determining that 49 U.S.C. § 10501(b) preempts local weed control ordinances, are simply not in point. City of Lincoln is seeking STB authorization to acquire the property interests in question in this proceeding, and is not acting unilaterally.

grounds. First, LLC argues that the use of eminent domain sought in that proceeding was for a highway, not a trail. LLC Reply at 19, point (1). This distinction is irrelevant. The City has determined that the Husker Link Trail and the storm sewer project are both important public improvements, of equivalent necessity to a motor vehicular project. In any event, the question before this Board is not whether it thinks about the merits of City of Lincoln's project, but whether the project unreasonably impinges on discharge of common carrier obligations.

Second, LLC claims that the use of eminent domain in State of Texas was not a direct attack on a prior agency determination. Id. For the reasons stated already, City of Lincoln's Petition for a Declaratory Order is not some kind of "attack" on a prior agency determination.

Third, LLC claims that the referenced decision did not involve a reduction in the width of the rail corridor. Id., point (2). But the use of eminent domain did reduce the size of the rail property; the State of Texas merely offered to acquire compensatory land onto which to move the rail facilities it was displacing. Here there are no rail facilities being displaced. Indeed, as indicated by the City's rail operations expert, Mr. Schuchmann in his Rebuttal Verified Statement at ¶9, LLC has ample facilities right now for all traffic (300 carloads/year)

LLC projects through 2020.¹² Since LLC in essence by its own admission has more than enough facilities already for the use levels it hypothesizes, there is no need to buy it anymore. In any event, LLC has plenty of land on the south side of its corridor, where LLC has explained to the City (Exhibit G to Hamill Verified Statement) it intends to shift its track anyway. To be sure, LLC has leased most of that land to the Cushman division of Textron, but LLC indicates in its brief that it is negotiating with Textron to permit Textron to buy out the lease. LLC Reply at 18. In short, LLC not only will have plenty of land, but money as well.

Third, LLC claims that the State of Texas decision pre-dates adoption of 49 U.S.C. § 10501(b). LLC Reply at 20, point (3). LLC in effect states that State of Texas is no longer good law, and claims that § 10501(b) preempts all state regulation, although with the concession that a state may exercise "legitimate police powers." Section 10501(b) has been treated as broadly preemptive, but nothing in it prevents this Board from determining that the preemption is unnecessary to protect discharge of the common carrier obligation in particular instances. This Board has repeatedly affirmed that it will not permit its jurisdiction to be used to thwart the legitimate application of state and local law. E.g., BNSF -- Abandonment Exemption -- King County, AB-6 (Sub-no. 380X), p. 3 at footnote

¹² Compare Hamill V.S. (projecting 300 carloads per year in 2020) with Schuchmann Reb. V.S. ¶¶ 9-11 and 18 (adequacy to that range and even more).

7, served August 4, 1998; RFRHA -- Abandonment Exemption -- in Garfield, et al. Counties, AB 547X, p. 3 at footnote 11, served May 21, 1999. City of Lincoln is employing this Petition for a Declaratory Order to clarify that its proposed application of eminent domain authority is lawful. Certainly the City views its use of eminent domain as well within the City's "legitimate police powers."

Finally, LLC claims the State of Texas decision involved a net gain of land for the railroad, whereas this cases "involves the net loss of land that is used and required for the provision of rail transportation." LLC Reply at 20, point (4). The basis for this Board's holding in State of Texas was that the use of eminent domain would not unreasonably interfere with rail services, since the State was supplying alternative facilities for the railroad. This has nothing to do with net gain or loss of land. The land that City of Lincoln seeks here has not been used for the provision of rail transportation and is not reasonably required for such purposes by LLC. LLC has consistently used the property in question only to store lumber. Compare Schuchmann Verified Statement attached to City's Petition (attaches photographs) with Rebuttal Verified Statement of Joel Pedersen, ¶ 5 (and associated aerial photos showing storage use). LLC previously told the City, as LLC indicates in its Exhibit G to the Hamill Verified Statement attached to LLC's Reply, that storage use is what LLC represented it intended for the land all along. Pedersen Rebuttal V.S. ¶ 5;

Genrich Rebuttal V.S. ¶ 3. Indeed, in order to stage its contrived pictures purporting to show that a forklift needed the space LLC has used for storage in order to off-load I-Joists, LLC had to move the lumber it had been storing on the site during the week ending December 19, 2003. The only thing this demonstrates is that LLC does not even require the space in question for lumber storage purposes.¹³

VI. LLC's Arguments Relating to Common Carrier Obligation
Are Unavailing and Not Credible

A. The Trail Is Not "Too Close" to the Rail

LLC makes a very limited effort to claim that the Husker Link Trail unreasonably impairs rail service. See LLC Reply at 16-18. LLC objects that the trail location between 19th Street and Whittier Street (a street roughly midway between 22d and 23d Streets) is located too close to the mainline track. LLC claims that its principal, Mr. Hamill, measures the trail as within 7.5 feet of centerline. LLC Reply at 16-17. This is not only wrong, but also now totally irrelevant, as LLC knows.¹⁴ As already indicated, LLC represented to the City that it agreed to

¹³ City of Lincoln officials have repeatedly expressed concern about the true motive behind LLC's actions. LLC's staged photographs attached to the Hamill V.S. in the end only serve further to call into question LLC's motives. LLC in its Reply disputes City's conclusion from remarks by Hamill and his attorney that the true motive of its OFA was to block any trail. Messrs. Pedersen and Genrich rebut LLC's claims again in Pedersen Rebuttal V.S. ¶ 5 and Genrich Rebuttal V.S. ¶ 3.

¹⁴ LLC is also flatly incorrect on the 7.5 foot claim. The City has always proposed compliance with FRA requirements, and always planned a fence at least 10 feet distant from rail centerline.

the Trail on the northernmost 20 feet of the right of way from 22d to 19th, and the City agreed to locate the trail there.

LLC claims that location of the trail with ten feet of the main track would interfere with track maintenance (LLC Reply at 16), but LLC has leased out the property to Textron at all locations proposed for the trail. The trail would no more interfere with rail maintenance than similar uses of the property which LLC agreed to under the Textron lease. In any event, as noted, this LLC concern is irrelevant as the City has agreed to place the trail on the northernmost 20 feet of the property -- in general over 30 feet from centerline.

Again, most of LLC's objections are academic. As we have repeatedly noted, LLC in its November 18 letter to STB stated that it does not contest a trail between 19th Street and 22d Street if located on the north 20 feet of the rail corridor. City of Lincoln indicated that it would so locate the trail. Although LLC now belatedly reneges (LLC Reply at 3) on what it said it conceded, its earlier admission serves to call into question LLC's claims that the trail at least between 19th and 22d Street interferes with any federal interest in this property. City of Lincoln would accept a condition on the declaratory order providing that the trail will be located on the north 20 feet of the rail corridor with a crossing at 19th Street. This is not an admission on the part of Lincoln that a trail on existing sidewalks closer to the centerline of the mainline between 19th and 22d is unsafe; it is simply an

indication that the City wishes to minimize points in controversy and to accommodate the wishes of LLC where it can without undue compromise of the important public projects.

City of Lincoln reiterates its commitment that any trail structure relating to the Husker Link Trail will comply with all applicable Federal Rail Administration safety standards, including all the clear distance requirements specified therein.

B. LLC's Claims about Interference with Unloading
of Certain I-Joists Is Contrived,
Belied by Expert Testimony, and
Contrary to Past Actions and Representations of LLC

The only other LLC objection discussed at any length in LLC's Reply is the claim that a trail on the northernmost 20 feet of the right of way between 22d Street and 23d Street would interfere with a certain form of unloading of "I-joists and dimensional lumber in lengths between 24 feet and 44 feet by forklift trucks" in the segment of right of way between Whittier Street and 23d Street. LLC Reply at 17. (Whittier Street is about half way between 22d and 23d Street). LLC claims that the form of unloading it contrived to depict in the pictures attached to the Hamill Verified Statement shows that the entire right of way is required by LLC.

The only use LLC has made of the northern 20 feet of the right of way between Whittier and 23d Streets (or for that matter between 22d and 23d Streets) is to store lumber, as the pictures supplied by City of Lincoln with its Petition indicate. See Schuchmann Verified Statement and exhibits. In response to LLC's Reply, City of Lincoln also reviewed its photo archives,

and those archives show only storage use of the northernmost 20 feet of the right of way in the available photos from 1990 to date. See Pedersen Rebuttal Verified Statement (aerial pictures in 1990, 1997, and 2002 showing storage use only if the northernmost 20 feet adjacent to LLC). Moreover, LLC essentially admits that in reality it intends only storage use, and it certainly admits that it so represented to the City. In particular, LLC attaches an exhibit G to Hamill's Verified Statement in which Hamill states that he told the City in February 2002 that he was moving his rail lines to the south, and planned to use the north side of the right of way for storage, and indeed for storage buildings. The storage uses actually employed by LLC and intended by LLC are totally inconsistent with the argument LLC contrives to present this Board in its Reply. Furthermore, Mr. Schuchmann points out in his Rebuttal Verified Statement at ¶ 12 that LLC has placed obstructions in the right of way wholly apart from the stored lumber on the northernmost 20 feet which belie LLC's claims. As Mr. Schuchmann indicates, this alone indicates that Mr. Hamill's claims "cannot be credited."

LLC obviously has been able to unload whatever it wishes to unload without any need to occupy the northern 20 feet of the corridor for movement of I-joists or dimension lumber. LLC's claims to the contrary are recent contrivances, and its pictures purporting to show a forklift truck holding product in the area in question are obviously staged. Indeed, LLC cleared away all

of its stored lumber in order to create the picture during the week ending December 19. Exhibit G to the Hamill Verified Statement, as well as the various photographs, indicate that no weight should be accorded to LLC's claims and staged photographs attached to the Hamill Verified Statement.

In any event, the City's rail operations expert, Mr. Walter Schuchmann of RL Banks and Associates, has evaluated LLC's claims. Mr. Schuchmann indicates, based on discovery documents supplied by LLC, that LLC appears to receive no more than about one carload per year of I-Joists or similar lengthy product. Schuchmann Rebuttal V.S. at ¶2.¹⁵ Furthermore, Mr. Schuchmann indicates that there are at least two other reasonable alternatives for unloading such product, even from the mainline (not to mention the southern spur) track. Neither method would require any use of the northernmost 20 feet where LLC has previously represented it wishes to construct buildings and where the City wishes to construct a trail. Schuchmann Rebuttal V.S. at 3-8.

LLC does not proffer any expert opinion by a comparable rail operations expert to support any conclusion contrary to those reached by Mr. Schuchmann. (Mr. Hamill may own Lincoln Lumber Company but he is not a railroad operations expert, and rail service to his business and on the rail corridor in question is supplied by a third party shortline.) LLC's claims

¹⁵ The documents in question are attached as an exhibit to the Rebuttal Verified Statement of Joel Pedersen.

are outweighed by its prior actions and representations and by the expert opinion (to which LLC provides no expert rebuttal) of Mr. Schuchmann. As Mr. Schuchmann states, no weight should be accorded the argument made by LLC in its Reply. Schuchmann Rebuttal Verified Statement at ¶¶ 8 & 12.

C. LLC Has Ample Capacity Regardless of a Trail

At page 18 of its Reply, LLC somewhat inconsistently seems to suggest that it wishes to use the north side of the right of way between 22d and 23d Street not to unload dimensional lumber but to construct another side track. Based on his expertise, including a site inspection and review of survey data obtained by the City through discovery (that data is set forth in Appendix D, Verified Statement of Surveyor D.A. Thomson), Mr. Schuchmann indicates that LLC has ample track space already to support all current operations, including those which Mr. Hamill forecasts (dreams of) through the year 2020. Schuchmann Rebuttal V.S. at 9-11 & 18. LLC has plenty of space for sidetracks elsewhere in the corridor, including between 23d Street and 24th Street, which he does not currently use for rail purposes. To the extent LLC implies that it intends to operate some kind of terminal for others, then it not only has adequate facilities already, or alternatively, it has only a pipedream, for any shipper would more likely use OLB's nearby facilities rather than pay a tariff to OLB for shipment, and to LLC for use of its few blocks of additional track as well.

In CSX Corporation -- Adverse Abandonment Application--

Canadian National Railway Company, AB 31 (Sub-no. 38), served Feb. 1, 2002, this Board indicated that the key issue when a railroad opposes an adverse abandonment application is whether the "removal of our jurisdiction as a shield against state law is in the public interest." Id. p. 6. In that case, this Board found that the railroad was not moving traffic on the property in question, and that shippers would not lose routing options or suffer from less efficient or more costly service. The Board concluded there was "no overriding federal interest" in the property. In the case at bar, LLC is not using the property sought by City of Lincoln to move traffic, and LLC as the only shipper will not lose any routing options or suffer from less efficient or more costly service. There is simply "no overriding federal interest" by LLC in the northernmost 20 feet of this property. The Genrich and Pedersen Verified Statements and Rebuttal Verified Statements, as well as supportive documents attached to City's Petition, all indicate the public interest in allowing construction of the Husker Link Trail.

D. Mr. Hamill's Trail Objections

Much of Mr. Hamill's Verified Statement is devoted to an exegesis of his opposition to the Husker Link Trail. His claims basically fall into two categories: claims that trails in urban areas are unsafe, or claims that there are alternative locations for the trail that avoid use of LLC property. City of Lincoln believes that these claims are not relevant to disposition of Lincoln's Petition for a Declaratory Order, because the key

issue is whether the trail will unreasonably impinge on discharge of any common carrier obligation as to the northernmost 20 feet of the right of way (i.e., there is no "overriding federal interest" that precludes a public project on the property). Since there does not appear to be any impingement, there is no need to litigate the public importance of the trail. To the extent there is some need, as shown in Lincoln's Petition, the trail is an important public project for the City. In any event, so the record is clear, the City takes exception to all Mr. Hamill's trail objections.

First, insofar as relevant to use of the rail corridor, City of Lincoln has committed to adhere to all applicable safety standards promulgated by FRA or the State of Nebraska for location of facilities adjacent to railroad structures. City's rail operations expert (Mr. Schuchmann) has otherwise indicated that the trail will not interfere with reasonable rail operations. City of Lincoln has otherwise concluded that routing the trail as sought by the City is the safest alternative for bicycle commuter traffic available.

Second, Mr. Hamill's claimed alternatives do not exist, except in his imagination. Mr. Hamill initially focussed on two alternatives: (a) routing the trail far to the north on "Y" Street, and (b) routing the trail through a parking lot to an apartment building owned by Lincoln Housing Authority located immediately to the north of LLC's property at 23d Street. These alternatives do not work for the reasons summarized in Rebuttal

Verified Statement of Terry Genrich, ¶ 2 (deficiencies in northern alternatives), and in the Rebuttal Statement of Joel Pedersen, ¶ 3 (City cannot acquire the property anyway). See also Verified Statement of Beverly Ann Fleming (LHA advised LLC and the City over a year ago that the northern route was not possible through LHA property) (Appendix E). In Mr. Hamill's Exhibit T, he also suggests routing the trail south at 24th Street to "W" Street and then west. This alternative does not work for the reasons summarized in the Genrich Rebuttal Statement at ¶ 2 (insufficient space, among other things). To make a long story short, the alternatives are, inter alia, either infeasible because of insufficient space (rendering the trails unsafe, out of compliance with safety regulations, and difficult to maintain), or because they would further degrade compliance of adjacent low-income housing with applicable legal requirements, or because they are both infeasible and illegal.

As Mr. Genrich indicates in his Rebuttal Verified Statement, the City has carefully considered all alternatives, and has concluded that the alternative which it is pursuing here is the only safest alternative, and the only alternative which achieves the City's fundamental safety goal of relieving unsafe congestion and interaction of bicycles, trucks and cars on parallel City streets. Genrich Rebuttal V.S. at ¶ 2.

VII. General Concerns Raised by
Mr. LaKemper on behalf of his Clients
Are Not Relevant Here

Arkansas-Oklahoma Railroad, Inc., et al.,¹⁶ filed "comments" dated December 26 in this proceeding arguing that no state regulation of railroad corridor is permitted. Insofar as relevant here, this claim is obviously wrong where this Board finds that discharge of common carrier obligations is not unreasonably impinged (i.e., that there is no overriding federal interest). City of Lincoln is merely following established procedures to seek such a determination.

Mr. LaKemper claims that, unlike in situations involving voluntary transactions, liability issues are ignored in condemnation proceedings. This is not true, but even if it were, it is not a grounds to deny relief. The claim is not true because once a property is condemned, it is owned by the entity which condemned it. The owner is obviously responsible for what it does, or invites to be done, on its property, just as any owner is. The property is no longer owned by the party (here LLC) from which it was condemned. If it is not the owner, LLC is not liable for accidents arising on what is now someone else's property. This is the traditional arrangement when property is bought or sold, whether voluntarily or involuntarily. It is hardly grounds to fault eminent domain that liability for property acquired by eminent domain is allocated to its new owner.

Mr. LaKemper complains that railroads "sometimes suffer

¹⁶ As indicated in footnote 2, supra, Mr. LaKemper's clients lack standing.

very substantial liabilities from illegal users of their property," citing a case called Nolan v. Soo Line Railroad Company. That may be the case, but it is part of living in a civilized society which relies on an independent judiciary in fifty states to resolve disputes. Here, City of Lincoln has pledged to fence its rail corridor, and plans a first class trail. Once constructed, there would be no reason for pedestrians or bicyclists to use sidewalks or paths currently located in the rail corridor. The City would expect that once the facility is installed, there will be far less intrusion than there is now, and certainly far less than under the lease that LLC negotiated with Textron. In any event, the City's outside expert has reviewed the situation and determined that the proposed trail would not pose an additional trespass burden. Schuchmann Rebuttal V.S. ¶ 15.

City of Lincoln requested its rail operations expert, Mr. Schuchmann, to examine specific concerns raised by Mr. LaKemper or his clients in the Verified Statements submitted by Messrs. Gohmann and Donoley. Mr. Schuchmann concludes that the concerns raised by Messrs. Gohmann and Donoley are not applicable to the case at bar. For example, Mr. Gohmann expresses concern about derailments of trains at 10 mph or more. Here, the train speed is less than five miles per hour. See Schuchmann Rebuttal V.S. ¶ 13. Mr. Gohmann expresses concern about future need for sidetracks. Mr. Schuchmann explains that there is existing capacity already to meet LLC's projections for the year 2020.

See id. ¶ 14. Mr. Gohmann expresses a concern about trespassers. As Mr. Schuchmann explains, the City's trail is unlikely to add to any burden not already present. See id. ¶ 15. Mr. Gohmann talks about grade crossings. LLC uses this corridor for an average of one carload per week during daylight hours at slow speeds. The City has committed to a crossing at an existing street crossing. As Mr. Schuchmann explains, Mr. Gohmann's concern is misplaced here. See id. ¶ 16. Mr. Donoley expresses a concern about weed control. Based on inspection, Mr. Schuchmann states that weed control is not a concern on this line. See id. ¶ 17.

VIII. Miscellaneous Issues

City of Lincoln has responded to all major issues raised by LLC or the LaKemper "commenters" in this proceeding. We have not focussed on issues which we think are irrelevant. Thus, although LLC faults Mr. Genrich's estimate of 110 feet for corridor width in Mr. Genrich's opening verified statement, since LLC refused to permit entry for a survey, the fault is hardly Mr. Genrich's. After Lincoln filed a motion for an order to permit entry for a survey, LLC finally allowed City to conduct a survey and the results are set out in Appendix D. The corridor is 100 feet wide but with a kink. This does not make any difference. Genrich Rebuttal V.S. at ¶ 4. If City of Lincoln has not responded to any adverse assertion made by LLC in its Reply, that failure of response should not be construed as an admission of correctness, but instead that the City views

the assertion as unsupported hearsay of so unreliable a character as not to merit response, or as irrelevant, or as manifestly false, or as already taken into account in Lincoln's trail plans. Genrich Rebuttal V.S. at ¶ 5.

IX. Conclusion

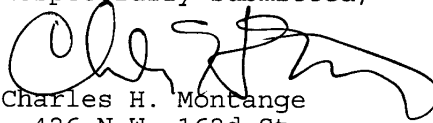
The key issue in this case seems to the City to be whether the proposed trail will unreasonably impact rail operations. The City's rail operations expert, Mr. Schuchmann, after review of LLC's Reply and after an inspection of the premises, has concluded that it would not. His expert opinion, which is unrebutted, is as follows:

"No meaningful arguments were advanced that the trail would impact rail service between 19th Street and 22d Streets, where LLC leased to Textron the entire right of way width except a 12-foot wide strip under the track over much of [the] length of the corridor. I find that there will be plenty of room between 22nd Street and 23rd Streets to conduct rail service after the construction of the trail, and to accommodate significant increases in LLC traffic, should that come to pass. LLC's claims to the contrary are inconsistent with reality and LLC's prior claims and the conduct of its business. I have considered all the other issues raised by LLC and based on my review of all filings to date, site inspection and expertise, a trail located on the northern 20 feet of the right of way with a crossing at 19th Street will not interfere with rail operations and indeed will not interfere with such operations even if expanded to the degree projected by Mr. Hamill in his Verified Statement."

Schuchmann Rebuttal Verified Statement at ¶ 18.

For the reasons stated above and in Lincoln's Petition, City of Lincoln's Petition for a Declaratory Order should be granted.

Respectfully submitted,



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Supporting Documents

Appendices	Description
A	Rebuttal Verified Statement of Walter Schuchmann
B	Rebuttal Verified Statement of Joel Pedersen
C	Rebuttal Verified Statement of Terry Genrich
D	Verified Statement of Surveyor Daniel A. Thomson
E	Verified Statement of B. A. Fleming (LHA)
F	Letter, M. Fowler (RTC) to D. Hamill, Jan. 5, 2004

Appendix A

Before The Surface Transportation Board
Finance Docket 34425
City Of Lincoln -- Petition For A Declaratory Order

Rebuttal Verified Statement
of
Walter Schuchmann

Qualifications

1. My name is Walter H. Schuchmann. I am Director, Rail Operations at R.L. Banks & Associates, Inc. and have previously submitted testimony in this matter. My qualifications are described in my prior statement. I have prepared this statement at the request of the City of Lincoln for use in connection with the City's Petition for a Declaratory Order. This statement is based on my expertise, and on personal knowledge obtained from a site visit, interviews, and review of documents as summarized herein

Safe Unloading Options Exist

2. I have reviewed Lincoln Lumber Company's (LLC's) entire Reply. The chief objection from a rail operation standpoint made by LLC is that the trail would interfere with unloading I-Joists. In particular, LLC has expressed concern about its ability to safely unload I-joists of lengths up to 44 feet once the trail is installed. Examination of "Statement of Rail Cars" provided by LLC in response to discovery requests reveals that only three railcars containing I-Joists were received in the three-year period of 2001-2003. Those carloads apparently contained a mix of I-Joist of varying lengths, thus at most only a portion of three carloads out of 144 in a three-year period might be handled as described by Mr. Hamill. Considering both rail and truck inbound delivery (one to four trucks daily, according to Hamill Verified Statement page 3), this is a minute portion of LLC's inbound shipments.

3. Mr. Hamill describes one method of unloading a railcar spotted at one specific location on the mainline track. Not all cars are unloaded in this manner. Boxcars are unloaded on the spur (See Hamill Verified Statement,

Exhibit C-2) and a bulkhead flatcar is pictured on the spur (see Hamill Verified Statement, un-numbered penultimate exhibit "New Trail/Rail Plan: Lincoln Lumber Bypass", page 3). Mr. Hamill's concerns focus only on the ability to unload I-Joists and similarly large pieces once the trail is in place. The steps of the unloading process that requires the most space perpendicular to the rail line are turning the load perpendicular to the railcar and transporting it parallel with the rail line. Mr. Hamill in effect suggests that a space of 44 feet, plus reasonable tolerance on each side of the forklift's path, is required.

4. Mr. Hamill purports to provide lengthy descriptions and photos said by him to depict unloading a center beam flatcar that is spotted between 22nd and 23rd Streets just north of Whittier Street (Hamill attachment 1-M.) In the following photos, he purports to show a forklift operating on the north side of the tracks unloading I-Joists from an imaginary railcar and turning to transport the load east to the rack on the north side of tracks near 23rd Street.

5. My experience with loading of materials onto and off of railcars by railroad and shipper employees is that there are many ways to conduct loading and unloading. Based upon my experience and site inspection, I can see several ways in which the I Joists could be unloaded efficiently and safely once the trail is in place. In short, instead of seeking solutions, Mr. Hamill contrives a particular scenario which he believes would be unsatisfactory once the trail is in place. This alone suggests that his opinion is not unbiased and is neither expert nor reliable from a rail operations standpoint. Alternative unloading methods are described below.

6. The one or two annual carloads of I-Joists could be spotted on the mainline near Whittier Street as described by Mr. Hamill. The material on the south side of the car could be unloaded as he implies. Material on the north side that is short enough to be handled without intruding on the trail would be moved directly to the racks, as he implies is his practice. Material on the north side that is long enough to cause concern would be set on the ground next to the railcar. (If such material reached the height of the railcar deck, the car would be moved east or west enough to start a new stack on the ground. Mr. Hamill notes LLC's ability "to move the railcars around" at page 1 of his statement.) Once emptied, the railcar would be moved out of the way and the material on the ground would be picked up from the south side and moved to the racks safely. This process requires only slightly more effort (to move the railcar) than that described by Mr. Hamill, and that additional effort would only be required when handling the rare I-Joist shipment.

7. Still another possibility would be to unload all material except the longer I-Joists from the north side of the railcar as Mr. Hamill implies he wishes. The long pieces on the north could be picked up by the forklift which would then back up to allow a flatbed trailer to be moved under the forks, and the load then would be placed on the trailer. The load could be moved east to the vicinity of 23rd Street on the trailer, unloaded there and placed on the racks by the same forklift or another, or delivered directly to LLC's customer. Loading material directly to an outbound delivery truck would be more efficient and safe than Mr. Hamill's described process for transferring all materials to a storage rack. There would be no need to turn the forklift and the load perpendicular to the track and impinge on the trail. This option demonstrates another possible method of handling the small proportion of LLC's inbound material constituted by I-Joists.

8. Since LLC represented to the City (See Hamill Verified Statement, Exhibit G, February 2002 memo) that it planned to put storage buildings on the north side of the corridor, it is clear that LLC in reality uses, or plans to use either the method used in paragraph 6 or paragraph 7 for larger pieces of lumber and I-Joists, or some similar method. Again, Mr. Hamill's claims to the contrary appear contrived and in my expert opinion should be accorded no weight.

Rail Capacity Sufficient to Accommodate Major Growth

9. The LLC property has the rail capacity to accommodate a large traffic growth without requiring additional track. Examination of a survey performed by Olsson Associates on December 29, 2003 indicates that the main track between 22nd and 23rd Streets is 559 feet long. Allowing 100 feet not used at each end and at an average railcar length of 75 feet (a conservatively high estimate representing centerbeam flatcars), seven railcars could be spotted on the main line. Nine 60-foot boxcars or bulkhead flatcars could be accommodated. The same survey indicates that the spur track has a usable length of approximately 200 feet, which equates to two 75-foot or three 60-foot cars. Thus the rail capacity of area between 22nd and 23rd Streets is between 9 and 12 cars. I do not mean to suggest that LLC would ever need that many railcars at its facility. However, the facility appears to have the existing capacity to handle 300 or more carloads per year, regardless of the City of Lincoln's proposed trail. There is additional track available to LLC between 23rd and 24th Streets for unloading or storage as well as main line storage capacity west of 22nd Street.

10. Even at far lesser number of cars spotted at one time, LLC could increase its inbound rail shipments significantly using its existing plant. I

believe that two to three cars east of the spur switch and the same number west could be handled efficiently or four to six cars total.

11. LLC's "Statement of Rail Cars" demonstrates its ability to accommodate multiple cars. In 2002, there were nine occasions when two cars were spotted at the same time and three such occurrences of three cars. This represents 27 of the year's 56 total rail cars. Most were released (unloaded) the same day, and never later than the day after placement. (Mr. Hamill states at page one of his statement that "LLC's average unload time is well under 4 hours.") At a rate of two cars per day, five days per week and four weeks per month, 40 railcars could be handled per month. At three cars per day, the monthly volume would be 60 railcars. This compares with a February 2003 (the busiest month of that year) volume of 15 cars, roughly one-fourth of demonstrated capacity, or annual volumes of 56 and 46 cars in 2002 and 2003, respectively. In short, rail use can increase significantly using existing trackage.

LLC Obstruction of the Railroad Right-of-Way

12. LLC has obstructed the rail right-of-way far more significantly than would the trail. In my Verified Statement of October 31, 2003, I point out that poles, driveways and parking areas obstruct the right-of-way in many locations, and that LLC leased to Textron the entire right-of-way width except a 12-foot wide strip under the track over much of length of the corridor. In its own "terminal area" between 22nd and 23rd Streets, LLC's inference that the entire right-of-way width is needed for unloading is belied by the configuration of LLC facilities just west of 23rd Street. There, a storage rack is located approximately four feet north of the north rail of the main track, restricting space available on the north side of the property. A low storage shed occupies even more of the right-of-way directly north of the storage racks. On the other side of the main track, the spur is 24.2 feet south of the main track, and a storage building is immediately south of the spur. Thus the open space between the south storage building and the north material rack is estimated at less than forty feet, far less than the 100-foot width of the entire right-of-way that Mr. Hamill implies is required. In addition, Mr. Hamill has informed the City that he intends to move all his rail facilities to the south to accommodate building on the north side of the right-of-way where the trail would go. See Hamill Verified Statement Exhibit G. Mr. Hamill's claim that the trail would interfere with rail operations simply cannot be credited, in my expert opinion.

Statements of John W. Gohmann and B. David Donoley

13. I also have been requested to review the Verified Statement of John W. Gohmann, who represents he is President of Minnesota Commercial Railway and a founder of Small Railroad Business Owners of America, and Mr. B. David Donoley, who represents that he is president of Arkansas-Oklahoma Railroad. I will focus my comments on the "operating concerns" identified by Mr. Gohmann in his statement. Mr. Gohmann argues that a right of way 50 to 100 feet wide is necessary to contain cars in the event of a 10-mph derailment. The City of Lincoln's current proposal is to acquire the northernmost 20 feet of a 100-foot right of way, leaving 80 feet in width for rail purposes. Since the rail line in question here is only five blocks long and is approached from a curve, it is not conceivable that rail traffic will be proceeding at 10 mph. To the contrary, the speed necessarily here will range from zero to about five mph maximum. (In my previous Verified Statement, I noted that rail movements are made at a slow speed, about three to four miles per hour according to Mr. Robert E. Miller of Omaha, Lincoln and Beatrice Railway Company (OLB).) Moreover, LLC has implicitly recognized minimal derailment concerns because it has leased out the bulk of the corridor for non-rail purposes to a division of Textron, reserving only a few feet on each side of centerline for rail purposes. Moreover, it must be recognized that it is extremely common in this country for railroads to have narrow corridors in urban areas -- rights of way 25 or 30 feet in width are very common. Indeed, it is frequently the case that railroads are in city streets, sharing use of the streets with motorized and non-motorized users, especially for short, dead-end branch switching operations like that of Lincoln Lumber Company. In short, while safety is obviously of concern, the City of Lincoln's proposal meets all FRA safety standards, and does not interfere with moving rail traffic into Lincoln Lumber.

14. Mr. Gohmann also discusses the possible need in the future for sidetracks. In this case, this is a non-issue. First, it is my understanding that the shortline railroad actually operating this line for LLC has ample sidetracks for storage. Second, LLC entered into a long-term lease with Textron whereby LLC essentially leased out the entire corridor for non-rail purposes, reserving only a narrow portion of it for rail purposes. This implies lack of need for sidetracks. Third, Textron has ceased its Lincoln operations, and LLC now admits it is negotiating to buy out the Textron lease. Since the Textron property is no longer in industrial use (it has been sold on one side to University of Nebraska and on the other to a developer), there is no need for sidetrack to serve any party other than Lincoln Lumber itself. I have already shown that there is ample space for LLC to store cars if it wishes to do so on existing track, even if its traffic more than tripled. There is also space, compatible with Lincoln's proposed trail, for additional side track, to accommodate traffic if expanded even as much as Lincoln Lumber projects

for the year 2020. The fact that OLB has its own facilities nearby suggests that Lincoln Lumber's small property is unlikely to be used for rail traffic other than traffic unloading for Lincoln Lumber itself. Other users would likely find paying one railroad (OLB) for rail movement much more economic than two (OLB and LLC). Thus, there are very strong reasons to doubt that rail traffic on LLC property will ever expand much beyond current levels.

15. Mr. Gohmann also expresses concern about trespassing on the active right of way. The railroad corridor in this proceeding is bisected by several City streets. Lincoln Lumber had leased the bulk of it to Textron for any purpose, including parking, storage, and crossing by vehicles and pedestrians. Any rail operations in such circumstances must take into account the possibility of pedestrians or motorized vehicles crossing the tracks. It is hard to see how the City's proposed trail would add to any burden not already present. To the contrary, it is my understanding that City of Lincoln plans to install a chain link fence between the trail and the rail corridor. This indeed was the only significant safety measure requested by OLB in my meeting with them. Moreover, Lincoln has now committed to locating the trail on the northernmost 20 feet of the right of way between 23d Street and 19th Street.

16. Mr. Gohmann also alludes to potential grade crossing protection requirements. The line at issue in this proceeding is already crossed by numerous City streets. The City has proposed to cross at an existing crossing. After the City filed its petition, LLC represented it would not oppose the trail from 22d to 19th Streets if City agreed to cross at 19th Street and place the trail on the northernmost 20 feet of the right of way. The City has agreed to those conditions. All these factors, plus the slow speeds for a line of this sort, dispose of Mr. Gohmann's concerns here.

17. Mr. Donoley's verified statement reiterates but with less detail the concerns expressed by Mr. Gohmann. Just as Mr. Gohmann's concerns are misplaced here, so are those of Mr. Donoley. Mr. Donoley also expresses concern about weed and brush control. Again, Lincoln Lumber leased the bulk of the corridor to Textron; this seems an acknowledgement that weed control is not a problem here. Based on my inspection of this entire line, I do not see how it would be a concern. Lincoln Lumber can readily handle weed control needs, regardless of a trail.

Conclusion

18. No meaningful arguments were advanced that the trail would impact rail service between 19th and 22nd Streets, where LLC leased to Textron the entire right-of-way width except a 12-foot wide strip under the track

over much of length of the corridor. I find that there will be plenty of room between 22nd and 23rd Streets to conduct rail service after the construction of the trail, and to accommodate significant increases in LLC traffic, should that come to pass. LLC's claims to the contrary are inconsistent with reality and LLC's prior claims and the conduct of its business. I have considered all the other issues raised by LLC and based on my review of all filings to date, site inspection and expertise, a trail located on the northern 20 feet of the right of way with a crossing at 19th Street will not interfere with rail operations and indeed will not interfere with such operations even if expanded to the degree projected by Mr. Hamill in his Verified Statement.

Appendix B

Before the Surface Transportation Board

City of Lincoln (NE))
Petition for a Declaratory Order)
Finance Dkt. 34425)

Rebuttal Verified Statement of Joel D. Pedersen

I, Joel D. Pedersen make this Verified Statement on behalf of the City of Lincoln based on personal knowledge, expertise and reliable facts known to me and after reading the Reply (including Mr. Hamill's verified statement) filed by Lincoln Lumber Company (LLC) in this proceeding.

1. Introduction. I am Joel D. Pedersen, Assistant City attorney for the City of Lincoln, Nebraska. I have previously submitted a verified statement in this proceeding and this statement is submitted in rebuttal as I have been asked to address issues raised in LLC's reply. Shorthand references used in my previous statement are adopted and used in the same manner in this statement.

2. Limitations on Alienation. LLC appears to argue in its reply that its property cannot be used for non-rail purposes. If this were the case, LLC's lease to Textron for non-rail purposes would appear to be invalid under Nebraska Property laws. In fact, it appears from a review of the records that no such restrictions exist. In my capacity as an attorney for the City, licensed in the State of Nebraska (Bar # 18848), I have been requested to research the title to the OFA Parcel. I have experience with land title issues and specifically with title issues related to the purchase and acquisition of railroads for public purposes. LLC appears in the chain of title by virtue of a quitclaim deed to the OFA Parcel as described therein from the Union Pacific Railroad. It is my opinion that the Missouri Pacific Railroad as predecessor in interest to the Union Pacific Railroad acquired the OFA Parcel from private owners and that their ownership therein does not derive from any grant of the government including any grant from the United States for railroad purposes or otherwise. Since the records of the Lancaster County Register of Deeds (Attached) show private property ownership and deeds of acquisition without restriction to the Mo Pac RR within a privately owned subdivision, my opinion is consistent with Nebraska Title standards and other applicable property law used to determine ownership of property in the State of Nebraska. Further, based upon my review of pertinent records, there appears to be no restriction of record that would in any manner limit the sale or use of the OFA Parcel for non rail purposes under applicable Nebraska property law even though it is unclear how the railroad acquired title to that portion of the OFA Parcel between 23rd and 24th streets.

3. Alternate Trail Routes. LLC appears to claim the trail can be located on Lincoln Housing Authority (LHA) owned property for about 1/3 the distance

between 22nd and 23rd streets. As a matter of law, that is not the case. It is my opinion that the City does not have legal authority to condemn any portion of the Lincoln Housing Authority's property adjoining the OFA Parcel. The Lincoln Housing Authority (LHA) is a separate "body corporate and politic" under the laws of the State of Nebraska and does have its own state granted ability to acquire property by eminent domain. See Neb. Rev. Stat. §§ 71-1528 and specifically 71-1528(4)(b) for the condemnation authority. Under applicable Nebraska Law, the City cannot condemn another agency that possesses its own eminent domain powers absent extraordinary circumstances that are not applicable here. While the City is involved in the creation and membership of the LHA board, Nebraska statutes provide the authority directly from the state. The City's actions merely enable the separate and independent authority, and in no sense does the City control or approve actions of the independent LHA board. LHA has been consulted about a voluntary transfer, and although LHA supports the trail, it indicates that the layout of its property makes loss of its parking without an adequate remedy and I have no reason to question this after review of the situation.

4. LLC's True Motive. Both LLC and their counsel have dedicated considerable space in their reply to take exception to my conclusions in paragraph 8 of my original statement. I here restate my conclusion. At the time I spoke with Mr. McFarland, I had been anticipating a conversation with him about the substance of the dispute, since it appeared Mr. Hamill was dead set against the trail simply because it was a trail. I hoped that I could pursue the merits with Mr. McFarland rather than the "no trail" and NIMBY scenarios. Not only did Mr. McFarland in an abrupt manner decline any substantive discussion, he (as stated before) dismissively informed me that his client would not agree to any amount of compensation or condition which would allow a trail and that any trail use whatsoever was unacceptable. Mr. Hamill's OFA and much of LLC's reply memorandum is dedicated to opposing any trail. At one point Mr. Hamill states: "I really believed and still do that if we operate an honest and good faith railroad business like we are trying to do, the Surface Transportation Board would not allow our railroad land to be taken away and used for a trail." Hamill V.S. Page 10 para 5. All of the protestations aside, LLC has in fact asserted its previous OFA as an irrefutable prohibition to the City's proposed trail under any and all circumstances.

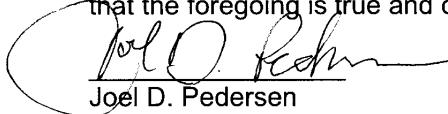
5. Rail Use of the OFA parcel. Since the City is willing to use an adjacent alley for the trail in order to avoid going through the middle of adjacent LLC property on the block from 23rd to 24th, the bone of contention continues around the use of the northernmost 20' of the OFA parcel between 22nd to 23rd street. (the North 20') This section appears from related pictures to be used almost exclusively to store lumber and materials. I have submitted aerial photos of the area historically showing uses similar to what was found in pictures submitted with Mr. Schuchmans report from 2002, 1997 and 1990. The City had suggested co-locating the storm sewer with the trail on the North 20'. It was about this time, Mr.

Hamill indicated his long term plans were to build buildings there. In fact, the Exhibit G to Hamill's verified statement confirms that LLC "verbally told the planning dept., building and safety dept. and public works that our long term plans were to move the RR tracks to the south side of the [OFA Parcel] land and then build several buildings on this land [the north 20'] to house building material."

6. **Other Discovery Exhibits.** Attached hereto is a copy of documents submitted in response to discovery requests marked as "Pedersen #15" and consisting of 7 pages of "Statement of Rail Cars." The exhibit was produced to me by Mr. Don Hamill in person on December 30, 2003.

7. **Local Project with Local Concerns.** LLC makes some effort to broaden the import and impact of this proceeding by alleging essentially that the City is a front for "trails people" and national trails organizations. This project involves both a needed storm sewer and a vital trail connection pertaining to the public business of the City of Lincoln. These projects are of long standing importance to the City of Lincoln. All of the interests are local and have been from the beginning. The NITU filed by the UP in 1997 instigated the trail portion of this proceeding, and the City has purchased the railroad right of way on both sides of the OFA parcel for trail purposes. I personally contacted Mr. Montange and initiated his representation of the City in this matter. All costs of this proceeding are being paid by the City of Lincoln and to my knowledge, the Rails to Trails Conservancy had nothing to do with this proceeding or with the routing of the trail, or with evaluation of routing of the trail.

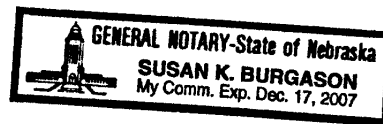
Pursuant to 28 U.S.C. section 1746, I declare under penalty of perjury that the foregoing is true and correct.

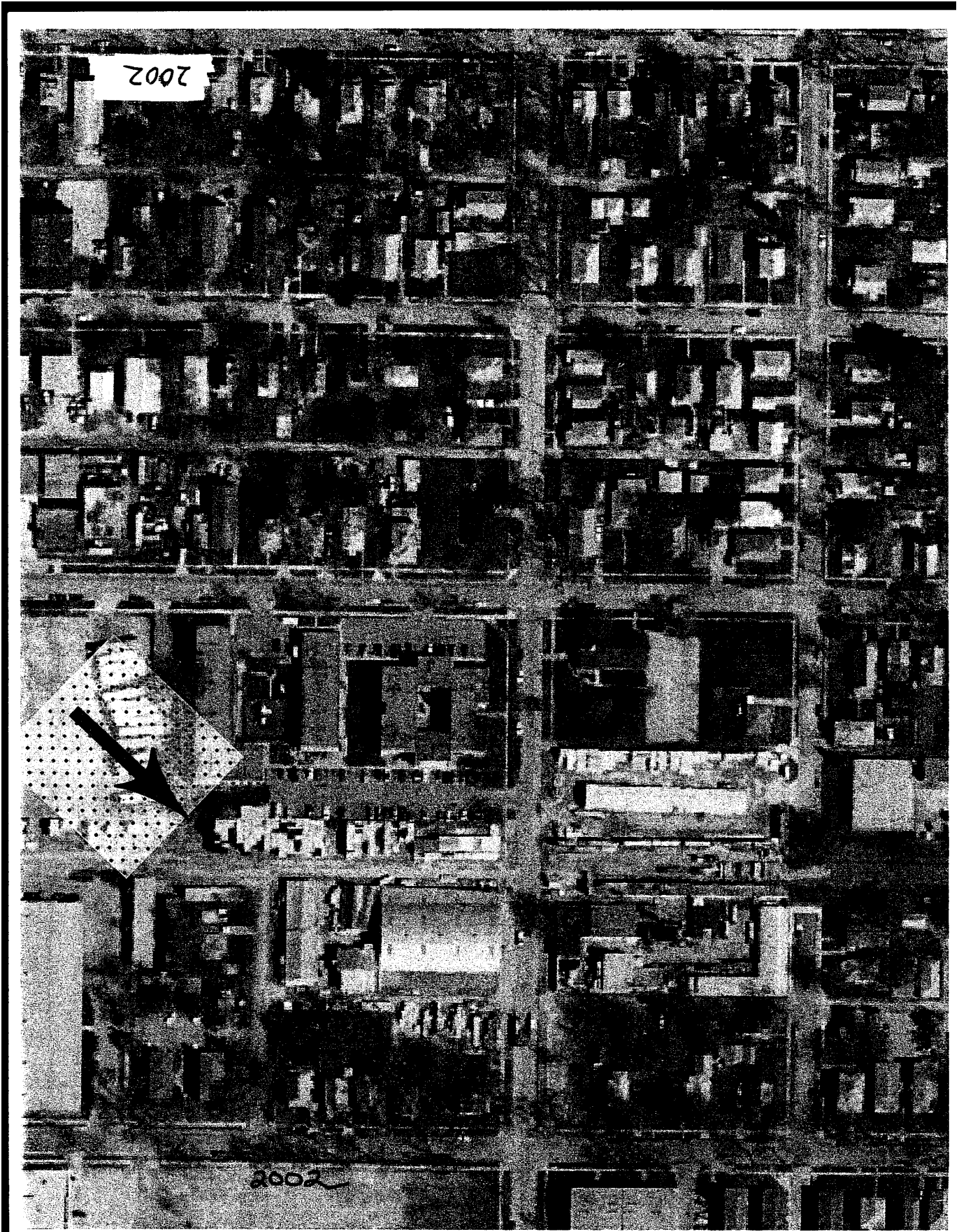

Joel D. Pedersen

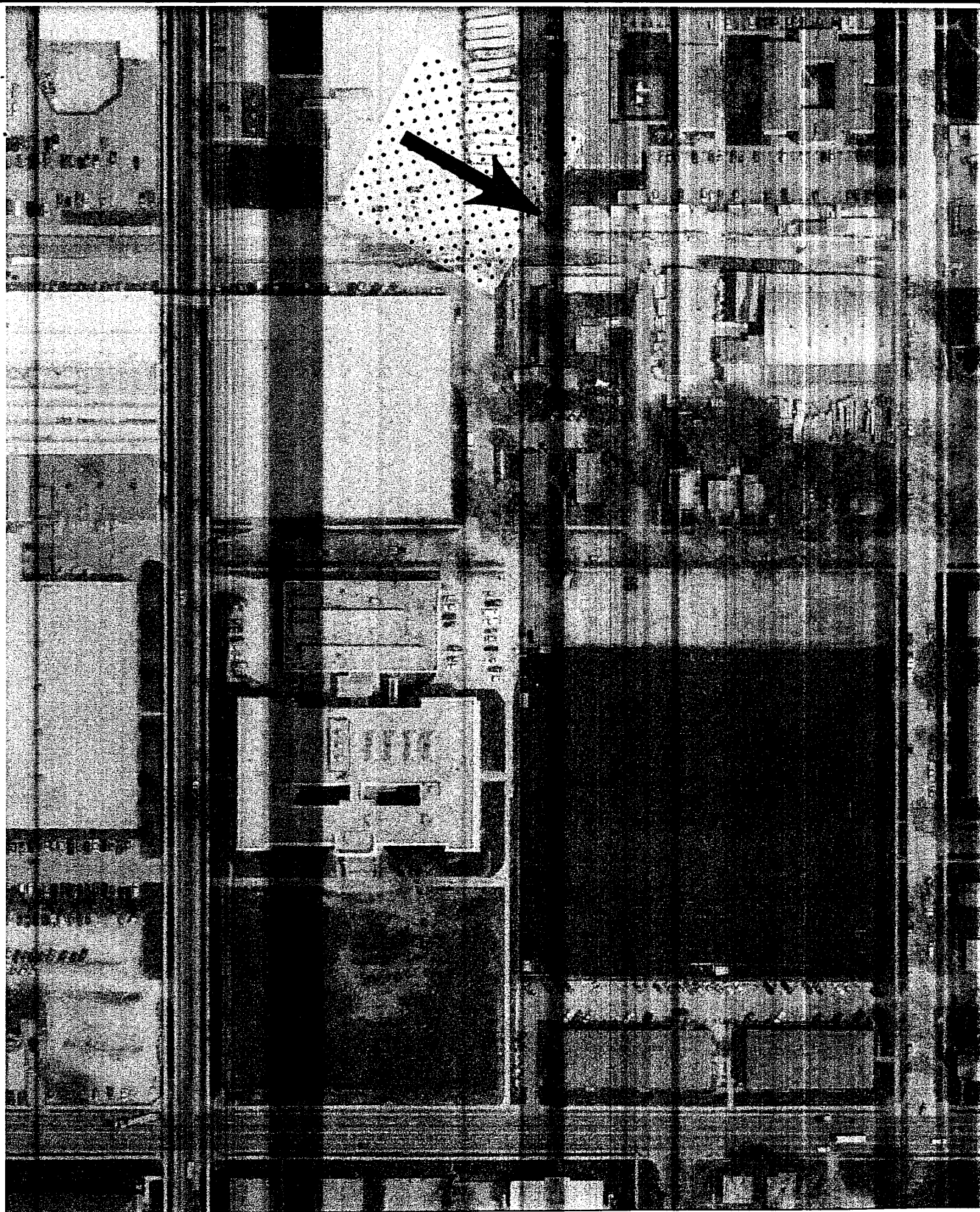
Dated: 1-06-2004

Before me witnessed:

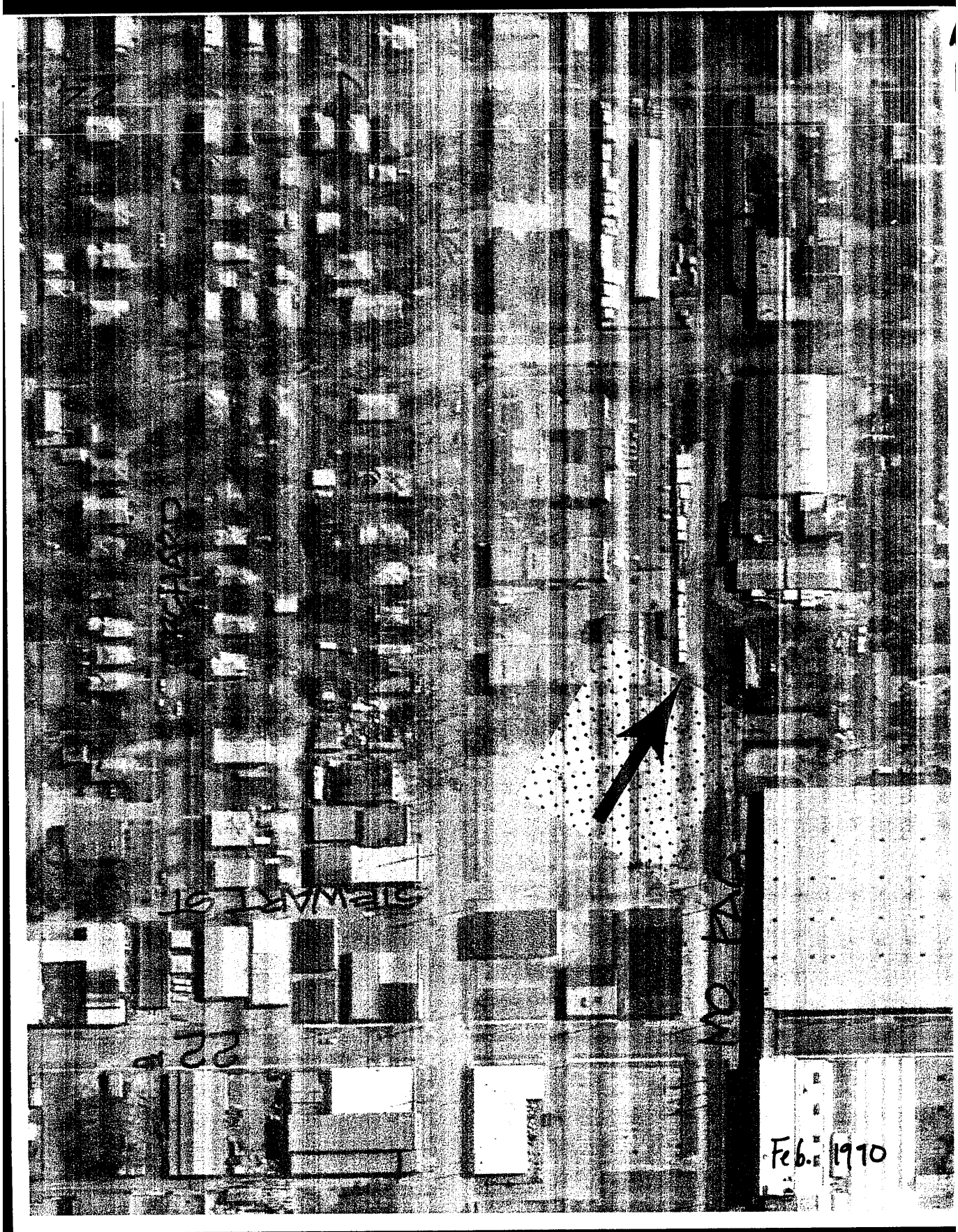

Notary Public 1-6-04







April 1997



Feb. 1970

BE 20
Pg 233

WARRANTY DEED RECORD.

and Filed for Record at 7 o'clock P.M.
County Clerk
Deputy

J. R. Black
+ wife
John R. Black

Entered on Numerical Index and Filed for Record
29 day of April A.D. 1886 at 1 o'clock P.M.

Warranty Deed.

O. L. Bell
County Clerk

Know all Men by these Presents:

That Mr. John R. Black and his wife, Emily A. Black
of the County of Lancaster, and State of Nebraska
for and in consideration of the sum of

Twelve hundred fifty
DOLLARS

in hand paid, do hereby GRANT, BARGAIN, SELL, CONVEY AND CONFIRM unto

The Missouri Cattle Railway Company

of the County of

Lancaster

the following described Real Estate situated in
County, and State of Nebraska

Lot numbers thirty (30) thirty one (31) thirty two (32) and thirty three (33) in blocks and sections and subdivisions of lots numbers
one (1) and two (2) of section (14) and twenty (20) of T. 4. Miller subdivision of West half of
the North East quarter and part of the East half of North West
quarter of section number twenty four (24) as originally cornered and divided
into number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 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1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 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1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 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2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 211

234

BK 28
P 923

WARRANTY DEED RECORDED.

7

J. O. Macfarland
single
Missouri Pacific
Railway Company

Warranty Deed.

Entered on Numerical Index and Filed for Record
day of April A.D. 1886 at 2 o'clock

O. G. Smith

J. H. Jones

Know all Men by these Presents:

That J. O. Macfarland and J. H. Jones
of the County of Lancaster and State of Nebraska
for and in consideration of the sum of
Twenty hundred and fifty
DOLLARS
to them paid, do hereby GRANT, BARGAIN, SELL, CONVEY AND CONFIRM, unto
The Missouri Pacific Railway Company
of the County of Lancaster and State of Nebraska

the following described Real Estate, to-wit:
Lots numbers 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 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836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 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1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 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1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166,

Abraham H. Griffith
his wife
The H. H. Co. by Geo. H. Co.

Deputy Secy

Filed for Record in the
day of June A.D. 1886

C. H. Co.

Know all Men by these Presents:

That Abraham H. Griffith and Emma Griffith

of the County of Lancaster and State of Nebraska

for and in consideration of the sum of

Eight hundred & twenty five

in hand paid, do hereby GRANT, BARGAIN, SELL, CONVEY AND CONFIRM unto

The Missouri Pacific Real Estate Company

of the County of Lancaster and State of Nebraska

the following described Real Estate situated

All of those certain tracts of land fifty eight feet in width off the corner

and of lots two three four five six and seven (2, 3, 4, 5, 6 & 7) of the

city of Lincoln said addition being lot described (20) of the

block of the West half of the North East quarter and part of the East half

of the North West quarter of Section Twenty four Township Twenty one Range

East

and do hereby covenant with the said Missouri Pacific Real Estate Company

and its successors heirs and assigns, that we are lawfully seized of said premises that they are free from incumbrance

we have good right and lawful authority to sell the same; and do hereby covenant to WARRANT AND DEFEND

in said premises against the lawful claims of all persons whomsoever.

And the said Emma Griffith

relinquishes all Right of dower

Signed this 5th day of June A.D. 1886

IN PRESENCE OF

M. E. Stewart

Willard B. Stewart

Notarial Seal

Lancaster County

Witness my hand and Notarial Seal

the day and year last above written

Willard B. Stewart

Notary Public

Lancaster County

Witness my hand and Notarial Seal

the day and year last above written

Willard B. Stewart

Notary Public

Lancaster County

Witness my hand and Notarial Seal

the day and year last above written

Willard B. Stewart

Notary Public

Lancaster County

P9522

James J. Bartlett
husband of
The State of Nebraska

Warranty Deed

Entered on Mineral Index and Recd.
day of June A.D. 1886 at

Know all Men by these Presents:

That James J. Bartlett and J. L. Bartlett
her husband
of the County of Lancaster and State of Nebraska
for and in consideration of

in hand paid to us hereby GRANT, BARGAIN, SELL, CONVEY AND CONFIRM unto
The Missouri Pacific Railroad Company
of the County of

the following described Real Estate situated
in the County of Lancaster, State of Nebraska
All of a certain tract of land fifty eight feet wide by one hundred feet deep
situated on the east side of the main line of the Missouri Pacific Railroad
between the intersection of the main line of the Missouri Pacific Railroad
and the East half of the north West quarter of the
Twenty four Township, Range 45 East and County of Lancaster, Nebraska.

and we do hereby covenant with the said Missouri Pacific Railroad Company
and assigns, that we are lawfully seized of said premises, that we are free from all
we have good right and lawful authority to sell the same, and we do hereby covenant to WARRANT AND DEFEND the
to said premises against the lawful claims of all persons whatsoever.

And the said J. L. Bartlett

relinquishes all Right of homestead

Signed this 4th day of June A.D. 1886

IN PRESENCE OF

W. H. Wilson

James J. Bartlett
J. L. Bartlett

The State of Nebraska,
COUNTY OF

On this 4th day of June A.D. 1886
I, W. H. Wilson, Notary Public in and for the State of Nebraska,
in said County, personally came to and examined the said James J. Bartlett and J. L. Bartlett
to me known to be the identical person described in and who executed the foregoing conveyance as grantor and acknowledged the same
ment to be their voluntary act and deed.

WITNESSES my hand and seal the day and year last above written.

W. H. Wilson
Notary Public
Lancaster County

Entered at the Customhouse at New York
day of April A.D. 1888

That He of E. Maryland and Governor of Maryland
his wife of E. Maryland
 of the County of Prince George and State of Maryland

of the County of _____ and State of _____

~~and large birds and deer of *Elanus leucurus* - the~~

Age Twenty four (24) in Nov. 1884 10 years (10) months

we have goodright and lawfull authority to sell the same, and we do hereby

Signed this fourteenth day of April A.D. 1886 in and to the above described premises

W. G. Mann
State of Nebraska

On this 14th day of July

WITNESS my hand and seal this 15th day of June 1864.

Antes de começar

Entered on Numerical Index and Catalogue
9th day of June A.D. 1860. L. A. 6005
C. H. Allen

de, hand paid, do hereby GRANT, BARGAIN, SELL, CONVEY AND CONFIRM unto
The Missouri Pacific Rail Way Company
of the County of _____ and State of _____
the following described tract of land, to-wit:
All of or certain tract of land, lying right feet in width (or) extending
lot Lot One (West & east 100 feet more or less) and off the South East
of one of A. D. Buffetts addition to the City of St. Louis in said
said addition comprising lot designated 77) of J. T. Mullins addition
of the West half of the North East quarter and part of the East half of
the North West quarter of section thirty four (34) Town Two (20) Range Six (6)
and we do hereby covenant with the said Missouri Pacific Rail Way Company
and its successors heirs and assigns, that we lawfully hold of said premises; that they are free from incumbrances
We have good right and lawful authority to sell the same; and we do hereby covenant to WARRANT AND DEFEND
to said premises against the lawful claims of all persons whosoever.
And the said _____ hereby relinquishes all right of counterclaim
In witness whereof the above said premises

Emma - Emma
W. A. G. G.

The State of Nebraska, ss.
 _____ COUNTY)
 On this _____ day of _____ 19____
 I, _____
 do hereby certify that _____
 in said County, personally came _____
 to me known to be the identical person described to him who executed the foregoing conveyance as stated
 and to be his voluntary act and deed.
 WITNESS my hand and seal _____ the day and year last above written.

AGF 1502

426
19287

District Court of the Second Judicial District
 Nebraska, in and for the County of Lancaster,
 do hereby certify that the foregoing is a true and
 correct copy of the Verdict returned in
 said Court on the 6th day of March A.D. 1901
 in a cause in said Court between Frank C.
 Davis as Plaintiff and W.B. Davis as Defendant
 as the same appears fully upon the records and
 files of said Court and in due and proper
 testimony as the Clerk of said Court

Seal District
Court of Lancaster
County, Nebraska

E. A. Sargent, Clerk

M. P. R. Co.
 Filed for Record
 March 11 1886
 at 3:22 P.M.
 O. G. Pitt. to G. H.
 to N. G. G. G. G. G.
 Blue 3:22

Henry McKim, Esq. New York
 Dear Sir: I have the honor to
 acknowledge the receipt of your
 letter of the 10th inst. in relation
 to the purchase of a new
 edition of the "Practical
 Treatise on the Law of
 Evidence" by John W. Alderson,
 Esq. of the Middle Temple,
 London. I have the pleasure
 to inform you that the
 same has been ordered to be
 purchased for the use of the
 Law School of the University
 of the State of New York.
 Very respectfully,
 John W. Alderson, Esq.

County and State of New York
Ships of Land, Water, and Air
extending the entire length of the
East half of the North West quarter and
West half of the North East quarter of Section
four Township Ten North Range Six East
Laguardia County and we do hereby certify
the Missouri Pacific Railway Company and its
successors have and second that they have
sized of said premises, that they are
evidence, that we have good right and
ority to sell the same and we do hereby warrant
warrant and defend the title to said premises
the lawful claims of all persons who have or
shall have, said State of New York
(Right of Government and to the above
uses.

Signed this twenty seventh day of February
1886

In presence of } Martin L. Carroll
Wm. M. Gayles Jr. } State Clerk

State of New York
County of New York } ss. On this day
before me, John A. Maguire, Esq. Clerk of the
County of New York, State of New York
personally came Martin L. Carroll and his
wife) to me known to be the legal husband and
wife of said Martin L. Carroll and they
advised me and acknowledged the foregoing
ance as grantors and acknowledged the same to
be their voluntary act and deed
Witness my hand and seal of the County and
State of New York

J. A. Maguire
County Clerk

Whereof the second line and third line
of the third line of the first line of the first line
of the first line of the first line of the first line

STATEMENT OF RAIL CARS

Pedersen #15

434-1778

CAR			CONTENTS		Actually Placed			RELEASE		CALLED TO:		
Initial	Number				Date	Time	Date	Time				
BNSF	564150	2x4-1L	Viking	12	29	00	8:30A	12	29	00	5:25	Rogers
LAH	553061	2x4-925/8 studs	Seaboard	12	29	00	8:30A	12	29	00	5:25	Rogers
LAH	557907	2x4 925/8 studs	Seaboard	1	19	01	10:30A	1	22	01	4:00P	Rogers
SDM	3342	2x4 925/8 studs	LB5	1	3	01	10:30A	1	3	01	5:10	Rogers
IAAR	43333	4x8 3/4 structural	Weyerhaeuser	1	10	01	1:00pm	1	11	01	11:50	Rogers
LSAC	10209	4x8 3/4 structural	Weyerhaeuser	1	10	01	1:00pm	1	10	01	6:00pm	Rogers
LSAC	10214	4x8 7/8 structural	Weyerhaeuser	1	9	01	9:00am	1	10	01	12:00pm	Rogers
PKCR	65646	2x4 925/8 studs	Viking	1	9	01	9:00am	1	10	01	12:00pm	Rogers
LAH	558341	4x9 7/8 structural	Viking	1	10	01	1:00pm	1	11	01	3:20	Rogers
BN	250062	2x6 925/8 plan three	Viking	1	12	01	9:30A	1	18	01	4:30A	Rogers
SSAM	43357	4x8 7/8 structural	Weyerhaeuser	1	3	01	10:30A	1	4	01	3:00P	Rogers
CP	20415	2x4 925/8 structural	Brimley	2	19	01	10:30A	2	20	01	10:00	Rogers
IAAR	4343	4x8 3/4 7/8 structural	Weyerhaeuser	1	3	01	10:30A	1	4	01	3:00P	Rogers
IAAR	4349	4x8 7/8 structural	Weyerhaeuser	1	15	01	9:30A	1	16	01	3:00P	Rogers
LSAC	10228	4x8 7/8 structural	Weyerhaeuser	1	15	01	9:30A	1	15	01	3:00P	Rogers
MAH	21025	2x4 studs	Shinson	1	15	01	9:30A	1	16	01	4:30	Rogers
BNSF	564085	2x6-16	Seaboard	1	19	01	10:30A	1	23	01	5:00	Rogers
NECL	65681	2x4-525/8 studs	Seaboard	1	17	01	12:00P	1	18	01	4:30P	Rogers
TTX	863253	2x8-10-12	Weyerhaeuser	1	19	01	10:30A	1	22	01	4:00	Rogers
BN	624089	2x4-16	Seaboard	2	7	01	11:15	2	7	01	4:30	Rogers
BN	249947	2x4 1049P	Plan three	2	20	01	11:30	2	23	01	10:30	Rogers
TTX	862202	2x8 2x10-2x12	Weyerhaeuser	2	22	01	10:50	2	23	01	10:30	Rogers

STATEMENT of RAIL CARS

ELDON
434-1778

CAR			CONTENTS		Actually Placed		RELEASE		CALLED TO:
Initial	Number				Date	Time	Date	Time	
SNM	04	3462	4x8 7/16 Structural Steel	2	20	01 11:30	23	01 10:30	Roger
LSR	10	235	4x8 7/16 Structural Steel	2	21	01 10:00	28	01 4:26	Roger
ITM	43	20	4x8 3/4 7/16 Structural Steel	2	21	01 10:00	28	01 4:20	Roger
LSR	10	204	4x8 3/4 7/16 Structural Steel	3	22	01 9:30	22	01 3:20	Roger
ITM	86	357	2x6 RL Seaboard	4	2	01 8:00	4	01 3:40	Roger
ITM	8	1421	2x4 10-2x4 11/16 U/King	4	2	01 8:00	4	01 3:40	Roger
LSR	86	637	2x8-2x10-16 U/King	5	24	01 8:00	24	01 5:00	Roger
ITM	86	1095	2x4 8 1/16 U/King	7	17	01 7:30	17	01 5:30	Roger
LSR	02	14	2x4 10x5 8 1/16 Seaboard	7	17	01 7:30	18	01 2:10	Roger
ITM	62	4561	2x4 RL Seaboard	8	3	01 7:30	6	01 8:30	Roger
LSR	84	399	2x6 RL Seaboard	8	3	01 7:30	8	01 5:30	Roger
ITM	27	4061	2x8-2x10-2x12 U/King	8	3	01 7:30	5	01 5:30	Roger
LSR	62	3854	2x4 8 1/16 Seaboard	11	2	01 7:30	2	01 3:30	Roger
ITM	62	4160	2x6 5/8 Seaboard	11	12	01 7:30	12	01 4:25	Roger
LSR	5	1384	2x4 RL Seaboard	11	19	01 1:00	19	01 4:30	Roger
ITM	72	7855	2x4 RL Seaboard	12	13	01 12:30	13	01 4:30	Roger
LSR	2	1208	2x4 RL Seaboard	12	13	01 12:30	14	01 10:30	Roger
ITM	21	032	2x4 RL Seaboard	12	17	01 11:00	18	01 11:30	Roger
LSR	35	819	2x4 RL Seaboard	12	21	01 8:00	2	02 4:35	Roger
ITM	3	681	2x4 RL Seaboard	12	21	01 10:30	26	01 2:30	Roger
LSR	3	684	2x6 RL Seaboard	12	21	01 10:30	26	01 2:30	Roger

STATEMENT OF RAIL CARS

3100N
434-1778

CAR				CONTENTS		Actually Placed				RELEASE				CALLED TO:		
Initial	Number					Date	Time	Date	Time							
BN	3	7	6	3	2	7	0XB0000 4 1/2 R 1/2	1	5	62	2:00P	1	6	02	4:00	Eldon
BCOL	7	3	0	2	5	2	West Missouri 2x6 Concession 1533	1	14	02	12:00	1	15	02	2:00P	Eldon
BCOL	7	3	0	9	7	9	West Missouri 2x6 CASSIA Empire	1	22	02	2:00P	1	23	02	3:00	Eldon
BN	3	1	9	5	8	7	0XB0000 3 1/2 R 1/2	1	17	02	2:00P	1	18	02	3:00P	Eldon
ADK	1	1	9	0	1	6	0XB0000 3 1/2 R 1/2	1	17	02	7:00	1	17	02	1:00P	Eldon
BUSF	7	1	3	0	7	8	0XB0000 7 1/2 R 1/2	1	16	02	7:00P	1	16	02	4:30P	Eldon
BN	2	8	7	0	5	3	0XB0000 7 1/2 4 1/2 R 1/2	1	7	02	7:30P	1	8	02	9:30	Eldon
BN	3	7	6	7	5	8	0XB0000 7 1/2 R 1/2	1	17	02	7:00	1	17	02	4:00P	Eldon
BN	2	8	7	0	6	5	0XB0000 7 1/2 R 1/2	1	7	02	7:30P	1	7	02	4:30	Eldon
BUSC	7	2	8	0	4	2	0XB0000 1/2 15:17 R 1/2	1	14	02	7:30P	1	14	02	10:30P	Eldon
BN	3	7	6	9	1	0	0XB0000 7 1/2 15:10 R 1/2	1	16	02	7:00P	1	16	02	4:30P	Eldon
BN	3	1	8	3	1	1	0XB0000 1/2 15:25 R 1/2	1	14	02	7:30P	1	15	02	2:00	Eldon
TAIR			4	3	4	8	Structure 7 1/2 1/2 3 1/2	1	11	02	7:30P	1	11	02	3:00P	Eldon
BUSF	7	6	0	6	1	1	0XB0000 3 1/2 R 1/2 15:29	1	11	02	7:30P	1	11	02	3:00P	Eldon
BUSC	7	6	0	5	8	4	0XB0000 3 1/2 T 1/2 R 1/2 15:30	1	10	02	7:00P	1	10	02	3:00	Eldon
BUSF	7	1	2	6	0	2	0XB0000 3 1/2 T 1/2 R 1/2 15:20	1	8	02	11:30P	1	8	02	4:00	Eldon
ATSF	5	0	1	5	7	0	0XB0000 3 1/2 T 1/2 R 1/2 15:19	1	8	02	11:30P	1	9	02	10:30	Eldon
BUSF	7	2	4	0	7	6	0XB0000 3 1/2 T 1/2 R 1/2 15:28	1	10	02	7:00P	1	10	02	3:00	Eldon
LW	0	7	4	1	9	6	2x4 American 3 1/2 T 1/2 R 1/2	1	17	02	2:00P	1	18	02	3:00	Eldon
ADK		3	6	1	8	3	4 1/2 7 1/2 Nebraska 1534	1	28	02	7:00	1	29	02	3:00	Eldon
BN	2	2	3	9	4	4	4 1/2 1/2 0XB0000 1534 R 1/2	1	21	02	7:00	1	22	02	3:00	Eldon
BUSF	7	1	3	0	9	2	4 1/2 1/2 0XB0000 R 1/2	1	27	02	7:00P	1	27	02	3:00P	Eldon

STATEMENT OF RAIL CARS

CAR			CONTENTS		Actually Placed		RELEASE		CALLED TO:
Initial	Number				Date	Time	Date	Time	
BN	3	1840	1	1/2 4x8 on board Rld	27	02 7:00	27	02 3:00	Eldon.
SEI	1	0096	1	5/8 x 3/4 SE on board Rld	28	02 4:00	28	02 4:00	Eldon
RBox	3	7503	1	1/2 on board Houtup	22	02 2:00pm	23	02 3:00pm	Eldon
BN	3	7676	1	1/2 on board Rld	29	02 12:00pm	30	02 3:00pm	Eldon
BNIS	6	2323	1	2xL West freight Tongs Rd	28	02 9:00pm	29	02 2:00	Eldon
RBox	3	4407	3	2x4 studs Warts	11	02 8:00am	11	02 4:00pm	Eldon
CM4	6	2374	3	LP 1 Tons Rld	4	02 7:00am	4	02 4:00pm	Eldon
BLCL	5	2195	2	2x8-2x10 American It	21	02 7:00am	21	02 4:00pm	Eldon
BN	3	7644	2	4x8 3/4 5x on board Rld	11	02 3:00pm	12	02 3:00pm	Eldon
ORLE	1	4641	2	4x8 7/16 on board Rld	6	02 7:00am	7	02 4:30	Eldon
ORLE	1	4684	2	4x8 7/16 on board Rld	6	02 7:00am	7	02 4:30	Eldon
BN	7	6087	2	4x8 1/2 on board Rld	7	02 7:00am	7	02 4:30	Eldon
LUU	7	7307	3	2x4 Rld American It	7	02 7:00	7	02 4:00	Eldon
MP	2	6928	4	2x4 Rld 9x98	3	02 7:00	3	02 4:00	Eldon
BN	6	2437	4	2x4 Rld 9x98	8	02 7:00	8	02 4:00	Eldon
MR	2	1573	4	2x4 9x98	22	02 7:00	22	02 4:00	Eldon
RBox	3	4648	5	2x4 studs LP 1 Tons	14	02 7:00	14	02 3:00	Eldon
TRTX	8	4183	5	2x4 Rld 9x98	15	02 7:00	15	02 3:00	Eldon
BN	6	2509	5	2x4 Rld 9x98	21	02 7:00	22	02 3:00	Eldon
BNIS	5	6444	5	2x4 Rld 9x98	21	02 7:00	22	02 3:00	Eldon
BN	6	2516	5	2x4 Rld 9x98	21	02 7:00	22	02 3:00	Eldon

STATEMENT of RAIL CARS

CAR				CONTENTS		Actually Placed				RELEASE				CALLED TO:	
Initial		Number				Date		Time		Date		Time			
2N	6	2	4 0 4 0	Barcode Empire	2x6	7	16	02	8:00	7	16	02	3:00	Eldon	6.
2N	6	2	5 4 3 3	Barcode Empire	2x4	7	15	02	8:00	7	15	02	3:00	Eldon	
2N	6	2	4 1 1 2	Barcode Empire	2x4	7	24	02	9:00	7	30	02	5:00	Eldon	
2N	3	7	6 1 3 9	Barcode Empire	2x4	8	7	02	12:00	8	5	02	11:00	Eldon	
2N	1	4	3 1 1 1	Barcode Empire	2x4	8	6	02	9:00	8	5	02	12:00	Eldon	
2N	7	6	0 8 8 5	Barcode Empire	2x4	8	6	02	9:00	8	5	02	12:00	Eldon	
2N	3	7	5 8 8 7	Barcode Empire	2x4	7	30	02	8:00	7	31	02	11:00	Eldon	
2N	3	0	0 9 0 0	Barcode Empire	2x4	7	30	02	8:00	7	31	02	11:00	Eldon	
2N	8	4	3 2 4 0	Barcode Empire	2x4	7	31	02	8:00	7	31	02	4:00	Eldon	
2N	6	2	3 0 8 5	Barcode Empire	2x4	8	20	02	9:00	8	21	02	10:00	Eldon	
2N	8	5	0 0 0 0	Barcode Empire	2x4	9	10	02	7:30	9	11	02	8:00	Eldon	
2N	7	3	2 9 7 7	Barcode Empire	2x4	10	23	02	7:30	10	24	02	10:00	Eldon	
2N	3	1	8 0 8 6	Barcode Empire	2x4	12	1	02	9:00	12	1	02	2:00	Eldon	
2N	0	8	4 3 9 2	Barcode Empire	2x4	1	5	03	7:30	1	5	03	4:00	Eldon	
2N	5	6	4 0 6 8	Barcode Empire	2x4	1	13	03	8:00	1	13	03	3:00	Eldon	
2N	7	6	0 6 2 0	Barcode Empire	2x4	1	21	03	11:00	1	21	03	9:00	Eldon	
2N	7	6	0 6 2 9	Barcode Empire	2x4	1	22	03	9:00	1	23	03	9:30	Eldon	
2N	8	6	1 1 0 6	Barcode Empire	2x4	1	21	03	11:00	1	28	03	11:00	Eldon	
2N	1	5	2 3 1 7	Barcode Empire	2x4	1	28	03	11:00	1	29	03	9:00	Eldon	
2N	2	5	0 7 2	Barcode Empire	2x4	1	23	03	9:00	1	24	03	3:00	Eldon	
2N	7	6	0 6 3 4	Barcode Empire	2x4	1	28	03	11:00	1	29	03	9:00	Eldon	

STATEMENT OF RAIL CARS

CAR				CONTENTS				Actually Placed				RELEASE				CALLED TO:	
Initial	Number							Date		Time		Date		Time			
MRCL	2	0	0	3	3	2x48-9's Stds	Seaboard	1	22	03	9:00	1	21	03	11:00	Eden	9.
BNSF	5	6	2	3	9	2x48-9's Stds	Appalachian	1	30	03	7:30	1	31	03	4:10	Eden	
UP	4	6	2	1	4	Certified Shingles		2	7	03	9:00	2	7	03	5:00	Eden	
BNSF	1	1	4	0	4	Certified Shingles		2	13	03	8:00	2	13	03	5:00	Eden	
SRV	7	3	0	3	3	2x6-RL	W Frigide	2	3	03	9:36	2	5	03	4:00	Eden	
SEY	7	3	0	2	1	2x4 RL	W Frigide	2	3	03	8:30	2	5	03	4:00	Eden	
UP	4	6	2	3	4	Certified Shingles		2	13	03	8:00	2	13	03	5:00	Eden	
MP	2	6	8	3	0	Certified Shingles		2	14	03	9:00	2	17	03	8:00	Eden	
MP	2	6	6	7	1	Certified Shingles		2	12	03	8:00	2	12	03	5:00	Eden	
BNSF	1	1	7	0	0	Certified Shingles		2	12	03	8:00	2	12	03	5:00	Eden	
MP	2	5	3	6	2	Certified Shingles		2	7	03	9:00	2	7	03	8:00	Eden	
UP	5	6	3	0	7	Certified Shingles		2	20	03	5:00	2	24	03	9:00	Eden	
ABE	1	9	1	1	5	2x4 RL	Potomac	2	10	03	8:00	2	10	03	3:00	Eden	
BNSF	7	6	1	0	6	2x4 RL	Potomac	2	10	03	8:00	2	11	03	3:00	Eden	
BNSF	7	6	0	7	9	2x4 RL	Potomac	2	25	03	10:00	2	26	03	4:00	Eden	
CD	4	2	0	7	2	1/2 or board	Potomac	2	21	03	9:00	2	28	03	4:00	Eden	
MRCL	3	0	0	1	6	2x4-9's Stds	Potomac	2	21	03	9:00	2	28	03	4:00	Eden	
UP	4	6	5	2	2	Certified Shingles		3	6	03	9:00	3	7	03	9:00	Eden	
MP	2	6	6	8	2	5	Certified Shingles	3	6	03	9:00	3	7	03	9:00	Eden	
MP	2	6	4	8	4	1	Certified Shingles	3	17	03	8:00	3	17	03	4:00	Eden	
MP	2	6	7	5	5	7	Certified Shingles	3	18	03	8:00	3	19	03	4:00	Eden	
MP	2	6	7	5	5	7	Certified Shingles	3	18	03	8:00	3	19	03	4:00	Eden	
MP	2	6	7	5	5	7	Certified Shingles	3	18	03	8:00	3	19	03	4:00	Eden	

STATEMENT of RAIL CARS

[illegible]

Appendix C

Before the Surface Transportation Board

City of Lincoln (NE))
Petition for a Declaratory Order)
)
Finance Dkt. 34425)

Rebuttal Verified Statement of Terry Genrich

I, Terry Genrich, make this Rebuttal Statement on behalf of the City of Lincoln based upon my personal knowledge, expertise, and reliable facts known to me, and after reading the Reply (including Mr. Hamill's Verified Statement) filed by Lincoln Lumber Company (LLC) in this proceeding.

1. LLC's conspiracy theory. LLC implies in its Reply that this proceeding is some sort of conspiracy instigated by Rails to Trails Conservancy (RTC). RTC has not been asked and in fact has not been part of this project at all. This is a City of Lincoln project. It is supported by City transportation, park, environmental, engineering, and other officials, and by a local trail organization called the Great Plains Trails Network, which has provided financial assistance for acquisition of the rail line to the east of 24th Street, as well as assistance for construction.

2. Alternative routes. Until the filing of its Reply, LLC has discussed with the City primarily the option of no trail, but from time to time has suggested diversion of the trail to north to "Y" Street. After careful consideration, we have determined that this alternative is unsafe, and that it would cause many users to avoid the trail entirely. Additionally, a purpose of the trail is to encourage bicycle commuting and to relieve congestion on streets. This purpose would likewise be defeated. In any event, we are trying to get bicyclists off "Y" Street, not encourage them to get on it. We understand that LLC has abandoned advocating the "Y" Street alternative. In its Reply, LLC now advocates a diversion of the trail at 24th Street south to "W" Street. Indeed, this appears to be the main alternative advocated in Exhibit T to Mr. Hamill's Verified Statement.

We have also evaluated this alternative. Here are some key issues: (a) The proximity of many buildings, including houses, to the edge of the street would mean that trail users would have to use the street (again defeating the purpose of the trail to get bicycle commuters off the streets) or the entire front yards of many residences in some cases up to the door stoops would have to be taken. (b)

Due to location of structures, any off-street trail would have to be on the south side of "W" Street, meaning the street would have to be crossed twice. Due to a steep grade between 22nd and 23rd streets, a retaining wall at least 5 feet high would have to be constructed. The most realistic place to cross back to the north would be 22d Street. But at that location the trail would have to narrow to six feet to provide enough clearance between the street and a steel beam holding up a pedestrian overpass that is adjacent to a nearby building. This would pose

maintenance problems in the winter (snow clearance issues) and in any event would not meet applicable design standards published by ASHTO. We are generally concerned about the number of entrance doors on this route as well, creating a blind hazard. I have attempted only to summarize our concerns. The point is that we have carefully considered all alternatives for some years, including the "W" Street corridor option. (c) At various times, including during the course of this proceeding, Mr. Hamill has also suggested that the City locate its trail on the parking lot of the Lincoln Housing Authority (LHA) property on the north side of LLC's property at 23d Street. LHA is a separate entity from City of Lincoln. LHA supports the trail, but by law must provide parking for its residents, and has no land for that purpose should the trail go through the parking lot. It is no answer to say that LHA might be able to acquire more land for parking, because the configuration of its building renders such parking undesirable especially for handicapped users and families. In any event, the trail would still have to be located on the LLC railroad corridor for most of the distance beyond the LHA property. (d) The point is that we have evaluated all alternatives. In our evaluation, we have sought to maximize safety, minimize impacts on all adjacent landowners, and yet create a trail which will be attractive and safe for bicycle and pedestrian commuters. It is our conclusion after careful study that the route employing the LLC property is clearly the best option. At some compromise to trail attractiveness, we have routed it along an alley on the north side of LLC's property from 23d to 24th Street, thus avoiding any bifurcation of LLC's property. We have agreed to place the trail on the northernmost 20 feet of the remainder of the corridor, as requested by LLC. This will keep trail users at least 30 feet from centerline, and given the slow speeds characterizing the infrequent use of this rail corridor, will more than protect against any derailment hazards. We have agreed to cross at 19th Street (an existing street crossing), ensuring there is no additional crossing, as requested by LLC. We have agreed to install a fence between the trail and the LLC property to minimize any possibility the trail will lead to trespass. We do not evaluate any other alternative as offering a solution nearly as safe, or nearly as effective, other than to place the trail on the rail corridor between 23d and 24th Street as well.

3. Mr. Hamill's claimed rail needs. Mr. Hamill's company, LLC, in the past has represented to the City that it wishes to construct storage buildings on the north side of the rail corridor, and even move all rail facilities to the south side. LLC has employed the north side of the rail corridor for outdoor storage of dimensional lumber. LLC has not employed the north side for any rail purpose, as explained in the initial Verified Statement of City's outside rail expert, Mr. Schuchmann. One of the reasons we project locating our trail on the north side, in addition to being asked to be on the north side by Mr. Hamill, is that Mr. Hamill previously had consistently used that property only for storage and had represented he intended to continue to do so. In response to our Petition, he has now moved the stored lumber out (on or about December 19) and then stage-managed some photographs purporting to show that he needs that area to unload lengthy I-joists if they are delivered in centerbeam rail cars. Yet Mr.

Hamill's discovery response to Lincoln's discovery shows that he receives, at most, one carload per year containing I-joists, and our rail expert (Mr. Schuchmann) has indicated that there are numerous other means to unload the I-joists. Mr. Hamill's past actions and representations belie his new claims of need, which should be discounted. The situation is similar to claims that Mr. Hamill now wishes to construct a rail terminal. Since he is served by a shortline (OL&B) with plenty of terminal space of its own, the notion of a competitive terminal served by a shortline with its own adjacent terminal is shallow at best.

But in any event, our outside rail expert has indicated that there is plenty of space to accommodate all the expansion forecast by LLC, regardless of the City's proposed trail. Mr. Hamill also now speaks of a rail spur on the north, inconsistent with his representations to the City in the past. As our outside rail expert (Mr. Schuchmann) indicates in his Rebuttal Verified Statement, there is ample track already for expansions proposed by Mr. Hamill. I must also caution this Board that Mr. Hamill has consistently represented to the City that he is opposed to any trail, and that his action in acquiring the rail corridor was to thwart a trail adjacent to his lumber yard. His ever changing concerns and ambiguous future plans are forever morphing into whatever he apparently feels may excuse his anti-trail sentiment before whatever tribunal or group he is at that time making his presentation. We are prepared to address any reasonable concern which Mr. Hamill presents, and believe that we have done so. As already indicated, we have minimized use of any of his property. However, we simply do not see any rail purpose that is reasonably served by blocking the City from acquisition of the northernmost 20 feet of the rail corridor from 19th to 23d Street (or, for that matter 19th Street to 24th Street since LLC does not appear to use the rail corridor between 23d Street and 24th Street for rail purposes at all). Since the trail project has been and remains a key priority of the City of Lincoln for safety and transportation purposes, we are duty bound to pursue acquisition of this property as in the best interests of the public.

4. Width of corridor. Mr. Hamill (LLC) refused entry for completion of a survey. Once LLC finally permitted entry for a survey (after forcing Lincoln to file a motion with this Board for an Order permitting entry), Lincoln has determined that the corridor is 100 feet wide. This has no impact on the merits of our Petition, other than to establish that there is ample space in the property to accommodate our trail as proposed without interference with bona fide rail needs of LLC. This conclusion is supported by the Rebuttal Verified Statement of Mr. Schuchmann, our outside rail operations expert.

5. Other considerations. Mr. Hamill in his verified statement makes other claims and representations, frequently based on hearsay. Insofar as Mr. Hamill attacks the trail or the trail planning, we had understood that the chief issue on whether STB should assert jurisdiction here to prevent the trail was whether there was a bona fide rail need for the property (i.e., whether the acquisition sought by the City would interfere with LLC common carrier obligations). The answer to that question is most certainly that the acquisition would not so

interfere. In any event, the trail is an important transportation and commuting facility for the City of Lincoln. Any suggestion by LLC or Mr. Hamill to the contrary is wrong. The City otherwise questions the relevancy of Mr. Hamill's claims. In particular, they are either (a) wrong, (b) fully considered and addressed in our trail plans, or (c) otherwise irrelevant.

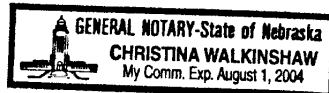
Pursuant to 28 USC 1746, I declare under penalty of perjury that the foregoing is true and correct.


Terry Genrich

Dated: 1-6-04

Before me witnessed:


Notary Public



Appendix D

Before the Surface Transportation Board

City of Lincoln (NE))
Petition for a Declaratory Order)
Finance Dkt. 34425)

Verified Statement of Surveyor Daniel A. Thomson

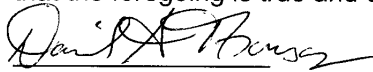
I, Daniel A. Thomson make this Verified Statement on behalf of the City of Lincoln in the above captioned proceeding based on personal knowledge and reliable facts reported to me.

1. Introduction. I am Daniel A. Thomson, and the City of Lincoln, through my employer Olsson Associates, employed me to complete a survey of real property consisting of a portion of the former Missouri Pacific Right of Way in the north half of Section 24 Township 10 Range 6 E of the 6th Principal Meridian in Lincoln, Lancaster County, Nebraska (Survey Site) in connection with the above proceeding. I am a Registered Land Surveyor licensed in the State of Nebraska. I have attached my resume of qualifications and experience for reference.

2. Survey of the Property. In connection with my assignment I did enter the Survey Site on December 19, 2003 and completed the necessary measurements and observations on December 26, 2003.

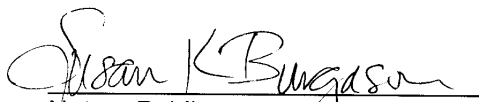
3. Exhibits. The survey records titled Railroad Track Exhibit, Husker Link Trail, Lincoln, NE and Property Exhibit, Husker Link Trail, Lincoln NE Dated December 29, 2003 are hereby submitted as official survey records under my seal as provided thereon under the laws of the State of Nebraska.

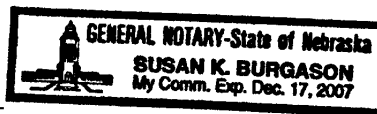
Pursuant to 28 U.S.C. section 1746, I declare under penalty of perjury that the foregoing is true and correct.


Daniel A. Thomson

Dated: Jan 06, 2004

Before me witnessed:


Notary Public



Appendix E

Before the Surface Transportation Board**City of Lincoln -- Petition for Declaratory Order****Finance Docket No. 34425****Verified Statement of Beverly Ann Fleming
Manager of Planning and Development,
Lincoln Housing Authority**

1. My name is Beverly Ann Fleming and I am Manager of the Planning and Development Department of The Housing Authority of the City of Lincoln (LHA). I have served in this capacity for eight years.
2. The LHA is a "body corporate and politic" under the law of the State of Nebraska. Although the five members comprising the governing board of are appointed by the Mayor, LHA is legally independent of the City of Lincoln. LHA has an independent power of eminent domain, such that LHA can condemn property. However, we have been advised by counsel that under the law of the State of Nebraska, LHA's property cannot be condemned by the City of Lincoln.
3. LHA's mission is to provide affordable housing to residents of Lincoln, Nebraska. One of the major ways we fulfill that mission is by owning and/or managing more than 1300 units of rental housing. In particular, we own and manage an apartment complex, commonly known as Northwood Terrace Apartments, located at the intersection of "Y" and N. 23rd Streets as reflected on the site vicinity plan attached as Exhibit "A" and incorporated by this reference, which abuts the north side of the former Missouri Pacific Railroad corridor, directly across from property owned by Lincoln Lumber Company (LLC) at 23d Street. This complex consists of a total of 78 one, two and three bedroom apartments and a childcare center open to the general public.
4. I have been LHA's point of contact with representatives of the City of Lincoln in connection with the location of the Husker Link Trail project. Terry Genrich (on behalf of the City of Lincoln) has spoke directly with Larry Potratz (LHA's Executive Director) and myself concerning the possibility of locating the Husker Link Trail on the southern 8 to 16 feet of LHA's property, immediately abutting the north side of the old railroad corridor at 23rd Street.
5. LHA informed the City of Lincoln that LHA strongly supports the Husker Link Trail in a letter dated October 2, 2002. We believe a contiguous off-street bicycle commuting trail would be a major safety enhancement for pedestrians and bicyclists, including our low-income tenants. However, LHA unfortunately cannot sell to the City a parcel of land on which the trail could be located. As we have explained to the City, the trail would necessarily go through the parking lot serving our apartment buildings. We have carefully evaluated that impact and have found that we would lose 30 parking spaces. Since the number of spaces currently available (96) is

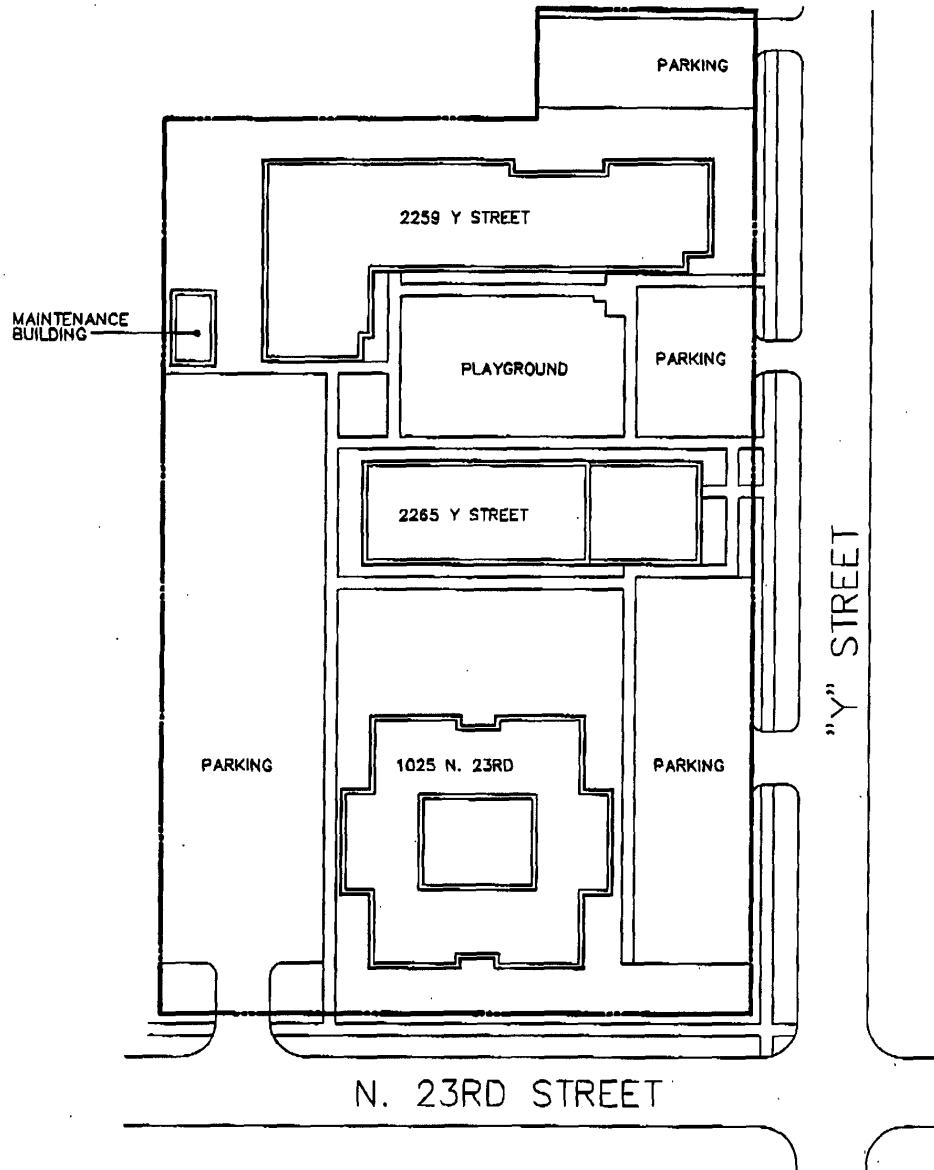


EXHIBIT 'A' SITE VICINITY PLAN		
NO SCALE	NORTHWOOD TERRACE APARTMENTS	

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Appendix F



January 5, 2004

Donald L. Hamill, President
Lincoln Lumber Company
P.O. Box 30373
Station A
Lincoln, NE 68503

Re: *City of Lincoln – Petition for Declaratory Order, STB Finance
Docket No. 34425*

Dear Mr. Hamill:

Rails-to-Trails Conservancy ("RTC") has recently learned of the above-referenced petition brought by the City of Lincoln, Nebraska, concerning a railroad right-of-way in Lincoln over which Lincoln Lumber Company ("LLC") provides rail service. In particular, we were surprised to see, in the "partial opposition" filed by LLC to the City's petition, the representation concerning the petition that "there is little doubt that the national trails organization is in back of it." This statement presumably refers to RTC, which is the only "national trails organization" dedicated to creating a nationwide network of trails from former rail lines and connecting corridors.

Let me assure that there was no communication or coordination between the City of Lincoln and RTC in the filing of this petition. RTC's staff routinely monitors proceedings before the Surface Transportation Board ("STB") that concern possible rails-to-trails (or rails-with-trails) efforts, which is how RTC first learned of the City of Lincoln's petition, and LLC's reply.

Nonetheless, having now become aware of this proceeding, I would like to take this opportunity to address your concerns about the safety of locating a trail adjacent to an active rail line, and to express our support for the City's petition. RTC has made an extensive study of "rails-with-trails," the findings of which are documented in our publication entitled "Rails-with-Trails: Design, Management and Operating Characteristics of 61 Trails Along Active Railroads." This report has found that, "despite fears that rails-with-trails expose users to greater danger by their proximity to active rail lines, rails-with-trails appear to be just as safe as other trails," including trails that are as close as two feet to an active rail line.

1100 Seventeenth Street, NW
10th Floor
Washington, DC 20036
202-331-9696
Fax: 202-331-9680
www.railtrails.org

With Field Offices in California,
Florida, Michigan, Ohio,
Pennsylvania & a Northeast
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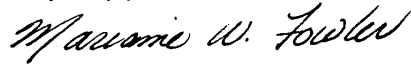
100% Recycled Paper

1996 Recipient of Presidential Award
for Sustainable Development



Trails are a wonderful addition to any community or neighborhood. I suspect you'll find when this one in Lincoln is complete, your own employees will be among its most frequent users. If there is anything I can do to help you better understand this issue or if you would like a copy of "Rails-with-Trails," please let me know. In my hometown of Alexandria, Va., just a few blocks from my house, the Mt. Vernon Bike Trail shares a corridor with the rail line supplying coal to our local power station. It works very well.

Very truly yours,

A handwritten signature in cursive script that reads "Marianne W. Fowler".

Marianne Fowler, Sr. Vice President of Programs

P.S. As a courtesy to the city of Lincoln, I'm copying Mr. Montange on this correspondence.

cc: Charles Montange, Esq.

Certificate of Service

I hereby certify that copies of the foregoing Reply and Appendices were served by US Mail, postage pre-paid, first class or equivalent, this 1th day of January 2004, upon the following representatives of parties or commenters:

Thomas McFarland, Esq.
208 S. LaSalle St., Suite 1890
Chicago, IL 61604 (for LLC)

Daniel LaKemper, Esq.
P.O. Box 185
Morton, IL 61550 (for Ark-Okla. RR et al)


Charles H. Montange