

Law Offices

VUONO & GRAY, LLC

2310 Grant Building

210793

Pittsburgh, PA 15219-2383

May 3, 2004

Richard R. Wilson
of Counsel

Telephone
412-471-1800

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John A. Vuono
William A. Gray
Mark T. Vuono*
Dennis J. Kusturiss
Christine M. Dolfi
Louise R. Schrage
Susan C. Indrisano+
*Also Admitted in Florida
+Also Admitted in Maryland

Re: STB Finance Docket No. 34486
Ohio Valley Railroad Company
- Acquisition and Operation Exemption
- Harwood Properties, Inc.
Our File 5028



BY OVERNIGHT DELIVERY

Honorable Vernon A. Williams, Secretary
Service Transportation Board
Mercury Building, #711
1925 K Street, NW
Washington, DC 20423-0001

ENTERED
Office of Proceedings

MAY - 4 2004

Part of
Public Record

Dear Secretary Williams:

Enclosed for filing please find the original and ten (10) copies of the Reply of Ohio Valley Railroad Company to the Petition of Indiana Southwestern Railway Company to Reject or Revoke and/or Petition For Stay.

Please time stamp the extra copy of this letter to indicate receipt and return it to me in the stamped self-addressed envelope provided for your convenience.

Copies of this Reply have been served on all parties of record.

Very truly yours,

VUONO & GRAY, LLC

Richard R. Wilson, Esq.

sb/31636

Enclosures

cc: Daniel A. LaKemper, Esq.
Louis E. Gitomer, Esq.
Ohio Valley Railroad Company

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34486

OHIO VALLEY RAILROAD COMPANY

- ACQUISITION AND OPERATION EXEMPTION -

HARWOOD PROPERTIES, INC.



REPLY OF OHIO VALLEY RAILROAD COMPANY TO THE PETITION OF
INDIANA SOUTHWESTERN RAILWAY COMPANY TO REJECT OR REVOKE
AND/OR PETITION FOR STAY

ENTERED
Office of Proceedings

MAY - 4 2004

Part of
Public Record

RICHARD R. WILSON, ESQ.
Attorney for Ohio Valley Railroad Company
Pa. I.D. #25661
VUONO & GRAY, LLC
2310 Grant Building
Pittsburgh, PA 15219-2383
(412) 471-1800

Dated: May 3, 2004

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34486

OHIO VALLEY RAILROAD COMPANY

- ACQUISITION AND OPERATION EXEMPTION -

HARWOOD PROPERTIES, INC.

REPLY OF OHIO VALLEY RAILROAD COMPANY TO THE PETITION OF
INDIANA SOUTHWESTERN RAILWAY COMPANY TO REJECT OR REVOKE
AND/OR PETITION FOR STAY

I. INTRODUCTION

On March 23, 2004, Ohio Valley Railroad Company ("OVR") filed a Verified Notice of Exemption with the Board to acquire and operate a line of railroad consisting of tracks 4 through 11 in Harwood Yard, Evansville, Indiana. The OVR Notice of Exemption was decided by the Board on April 16, 2004 and served on April 22, 2004. On April 14, 2004, Indiana Southwestern Railway Company ("ISW") filed a Petition to Reject or Revoke or a Petition to Stay OVR's Exemption Notice. OVR files this Reply to the ISW Petitions and requests that the Board deny the relief requested by ISW.

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34486

OHIO VALLEY RAILROAD COMPANY

- ACQUISITION AND OPERATION EXEMPTION -

HARWOOD PROPERTIES, INC.

VERIFIED STATEMENT OF WILLIAM E. GRAY

My name is William E. Gray and I am the President and sole shareholder of Ohio Valley Railroad Company. ("OVR") I am authorized to provide this Verified Statement to the Surface Transportation Board in connection with the Notice of Exemption filed on behalf of OVR on March 23, 2004. I have personal knowledge regarding the matters set forth in the Verified Notice of Exemption.

ISW questions OVR's right to invoke the Surface Transportation Board's class exemption regulations based on what appear to be factual misunderstandings regarding the transactional history of Harwood Yard and the corporate relationships between OVR and Mid-America Locomotive and Car Repair, Inc. ("MALX"). ISW implies that OVR is an alter ego or surrogate for MALX which is seeking to covert its private yard tracks into common carrier railroad facilities. However, the facts do not support ISW's claims.

OVR is an Indiana corporation which I formed for the purpose of providing common carrier rail service to MALX and to other companies from the rail facilities located in Harwood Yard. The Harwood Yard facilities are owned by Harwood Properties, Inc., in which I am the controlling, majority shareholder. OVR is not a subsidiary of MALX or Harwood Properties. While MALX has requested that OVR

reinstitute common carrier rail service in Harwood Yard, MALX does not own or control OVR.

Harwood Yard has long been a common carrier rail yard. It was part of the Illinois Central Gulf Railroad, and was then sold to Indiana Hi-Rail which in turn transferred Harwood Yard and the Evansville-Poseyville main line in a bankruptcy liquidation sale to Rail-America which operated the line in the name of its wholly owned subsidiary, Evansville Terminal Company ("ETC"). On June 29, 1996, ETC and Rail-America agreed to sell the real estate, shop buildings and tracks in Harwood Yard, and permanent rail access rights to CSXT at M.P. 244.7 to MALX under a mortgage note with a five year balloon payment. (See Exhibit A) On September 1997, Rail-America acquired the mortgage note from its subsidiary, Evansville Terminal Company. (See Exhibit B) Rail-America retained title to Harwood Yard until full payment of the note. In 2002, MALX was unable to refinance its mortgage obligation with Rail-America and was forced to seek a purchaser for Harwood Yard. In March, 2003, Rail-America/ETC sold the Evansville-Poseyville Line to Pioneer Rail Corporation under the name of its subsidiary corporation, Indiana Southwestern Railway Company ("ISW")(See STB Finance Docket No. 33859). ISW sought to acquire Harwood Yard from MALX but MALX and ISW did not agree on terms of sale. In 2003, Harwood Properties, Inc. paid the balance of the note to Rail-America and acquired all right, title and interest in the Harwood Yard properties and CSXT access rights by quit-claim deed from Rail-America dated October 27, 2003 (Exhibit C) and from MALX by deed dated September 23, 2003 (Exhibit D).

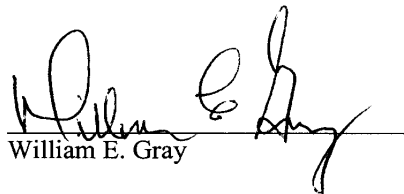
While Harwood Yard was used by MALX in connection with its locomotive and car repair business, MALX also used the yard facilities for the origination and

termination of common carrier through rail shipments by ETC and ISW (see e.g. Exhibit E FT ISW 8000E Section 1 Item 1000). However, ISW obtained no STB authority to provide common carrier rail service in Harwood Yard in Finance Docket 33859. Moreover, at no time prior to the filing of the OVR Notice of Exemption did Rail America or any other former common carrier railroad owner seek ICC or STB abandonment authorization for Harwood Yard.

OVR, after the effective date of its exemption notice, intends to enter into a lease agreement with Harwood Properties, Inc. which will enable OVR to reestablish common carrier rail service in Harwood Yard on reasonable terms and conditions for MALX and for other parties who have requested such service from OVR. OVR also intends to establish public team track service at a location within Harwood Yard. OVR is currently in negotiations with other shippers in the Evansville, Indiana area which for competitive and commercial reasons cannot be publicly disclosed. However, I would be happy to make this information available to the Board on a confidential basis if the Board deems it necessary.

I, William E. Gray, President of Ohio Valley Railroad Company, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to release this statement.

Executed on 3rd day of May, 2004.


William E. Gray

PURCHASE AGREEMENT

THIS AGREEMENT, made this 29th day of June, 1996, by and between the **EYANSVILLE TERMINAL COMPANY**, ("Seller"), and **MID AMERICA LOCOMOTIVE AND CAR REPAIR INC.**, ("Buyer")

WITNESSETH:

WHEREAS: Seller is the owner of real estate, buildings, equipment and inventory, and property appurtenant thereto, known as the Harwood Yard Repair Shop in Vanderburgh County, Indiana, (the "Shop"); and,

WHEREAS: Seller has agreed to sell, and Buyer has agreed to purchase the Shop subject to and in accordance with the further terms and conditions hereof;

NOW THEREFORE, for and in consideration of the mutual benefits expected to be derived by the parties hereto and of the mutual covenants and agreements contained herein, the Parties have agreed, and do hereby agree as follows:

1. **Assets Purchased and Sold:** The assets to be sold are the real estate and support tracks as depicted on Exhibit "1" attached hereto, together with the shop building at Harwood Yard and all equipment and inventory located therein and thereon. In addition Seller shall grant permanent access for movement between Harwood Yard and the CSXT lines located at MP 244.7; provided, however, that Seller reserves unto itself a permanent Easement sufficient to install a single track from the current locations of the North Switch Lead located between the mainline switch and the switch leading to #2 and #3 tracks as depicted on Exhibit "1" attached hereto.

2. **Purchase Price:** The purchase price shall be Three Hundred Thousand Dollars (\$300,000) payable as follows: Forty Five Thousand Dollars (\$45,000.00), payable as follows: Forty Thousand Dollars (\$40,000.00) cash at execution hereof and balance of \$5000.00 in exchange of services from Buyer to Seller. The balance of the Purchase Price is payable in equal monthly installments of principle and interest at the rate of 10% per annum calculated on a 15 year amortization, in arrears, of \$2,740.24, and with a balloon payment of the unpaid balance at the end of 5 years, at which time title shall pass; provided however, that Buyer may pay the balance of the Purchase Price at any time with no prepayment penalty and title shall pass upon such payment in full.

3. **Switching Services:** Seller agrees to provide switching services to Buyer as needed to conduct Buyer's operations at the Shop for the sum Twenty Five Dollars (\$25.00) per car (which includes movement both ways) if moved in existing trains subject to annual adjustment based upon mutually agreed upon indices. Additional switching services and those provided other than in existing trains shall be at the then current tariff rates.

4. **Locomotive Inspections:** As partial consideration hereof, Buyer agrees to perform, and certify quarterly federal locomotive inspections on any and all locomotives leased or

Exhibit A

owned by Seller and located for inspection purposes at Harwood Yard for the sum of Five Hundred Dollars (\$500.00) per inspection plus material costs; provided however, that the amount reflected herein is subject to annual adjustment based upon mutually agreed indices.

5. Storage of Equipment: The parties agree that following the sale Buyer shall have the use, at no cost to buyer, of tracks #2 and #3 located in Harwood Yard as depicted on Exhibit "I" attached hereto on an as needed and when available basis to store equipment. Following the sale Seller shall have the use, at no cost to it, of tracks #4 and #5 as depicted on Exhibit "I" attached hereto on an as needed and when available basis to store equipment.

6. Environmental: Buyer agrees to indemnify and hold Seller harmless of and from any and all claims or demands arising from any and all environmental incidents that may arise as a result of Buyer's ownership and use of the Shop. Seller agrees to contribute up to Five Thousand Dollars (\$5000.00) to the cost of installation of a track pan and related equipment at the fueling facility located in Harwood Yard.

7. Disclaimer of Warranties-Condition of Shop and Equipment: With respect to the Shop, Equipment and Inventory located at Harwood Yard, Seller, expressly disclaims and makes Buyer no warranty or representation, expressed or implied, of merchantability or fitness for any particular purpose or otherwise; including, but not limited to, the fitness for use, design or condition, the quality or capacity, the workmanship, or that it will satisfy the requirements of law, rule, regulation, or specification pertaining thereto; it being expressly agreed that all such risks, as between the parties hereto, are to be borne by Buyer. Seller shall not be responsible or liable for any direct or indirect incidental or consequential damages to or resulting from the installation, operation, or use of the Shop, Equipment or Inventory. Buyer's acceptance of delivery of the Line and its Shop, Equipment, and Inventory shall be conclusive evidence as between the parties hereto that all of the above is in condition satisfactory to Buyer.

8. Representations and Warranties:

Of Seller:

1. Seller is the owner of the Shop and all authorizations have been secured permitting Seller to enter into this Agreement.
2. To Seller's knowledge there are no unsatisfied judgments or liens against or threatening the Shop and there is no litigation, proceeding or investigation pending or threatened against the Seller or the Shop which would result in any material adverse change in the Shop or the condition or value thereof, or which may materially affect the Seller's right or ability to perform and carry out fully its obligations hereunder.
3. The persons executing this Agreement on behalf of Seller are authorized and empowered to enter into this Agreement on behalf of Seller.

Of Buyer:

1. Buyer is incorporated and in good standing in the State of Indiana.
2. Buyer knows of no facts defects events or conditions which would disqualify it from entering into this Agreement and carrying out the terms and conditions imposed upon it hereunder.
3. The execution delivery and performance of this Agreement is not prohibited by or in conflict with any provisions of any loan or other outstanding Agreements or commitments applicable to the Buyer.
4. The persons executing this Agreement on behalf of Buyer are duly authorized and empowered to enter into this Agreement on behalf of Buyer.
9. **Closing Date:** Closing shall take place on June 29, 1996, or at such other date as the parties shall mutually agree.
10. **Survival of Representations and Warranties:** All agreements, covenants, representations and warranties contained in this Agreement shall be true and correct in all material respects on the Closing Date as if made on and as of such date, and survive the Closing Date, execution and delivery of this Agreement and any other instruments in writing in respect thereof.
11. **Assignment:** Neither of the parties may assign or transfer its rights, benefits, duties or obligations hereunder without the prior consent of the other party.
12. **Notices:** All necessary notices, demands and requests required or permitted to be given under the provisions hereof shall be deemed duly given if mailed by certified mail, postage prepaid and properly addressed as follows:

If to Seller:

Evansville Terminal Company
King Street Station
1800 Diagonal Road, Suite 150
Alexandria, VA. 22314
Attn: John Marino, President

with copy to .
RailAmerica Inc.,
301 Yamato Road, Suite 2222
Boca Raton, FL. 33431
Attn: Gary Marino, Chairman

If to Buyer:
Mid America Locomotive and Car Repair Inc.
201 West Main Street
Newburgh, Indiana, 47630
Attn: Charles E. Jensen, Executive Vice President

13. Entire Agreement: This Agreement constitutes the entire agreement between the parties, and supersedes all prior oral agreements or contracts, formal or informal, between the parties.

14. Applicable Law: This Agreement shall be governed and construed in accordance with the laws of the State of Indiana.

15. Counterparts: This Agreement may be executed in multiple counterparts, each of which when executed shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument notwithstanding the actual date of the execution thereof.

16. Miscellaneous: This Agreement may be modified only by an agreement in writing executed by the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, personal representatives, successors and assigns, subject, however, to the restrictions against assignment as provided in Section 8 hereof. The waiver by either party of a breach of a provision hereof shall not operate or be construed as a waiver of any subsequent breach hereof. All paragraph headings contained herein are supplied for convenience of reference and shall be given no weight or value in the construction of this Agreement, nor shall any weight or value be given to the relative position of any part or provision hereof in relation to the further provisions hereof in determining such construction.

WITNESS THE EXECUTION hereof and as of the date first above written:

Attest:

Gay A. Carlisle

Attest:

Virginia L. Jensen
Charles E. Jensen

Seller:

Evansville Terminal Company

By:

John H. Harkin
Its: President

Buyer:

Mid America Locomotive and
Car Repair Inc.

By:

Charles E. Jensen
Its: Executive Vice President

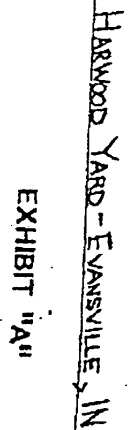


EXHIBIT "A"

SALE AGREEMENT

This Agreement is made this ___ day of September, 1997 by and between RailAmerica, Inc., a Delaware corporation ("Buyer") and Evansville Terminal Company, a Delaware corporation ("Seller").

WHEREAS, Seller has entered into a Purchase Agreement dated June 29, 1996 ("Shop Agreement") with Mid America Locomotive and Car Repair Inc. ("Mid America");

WHEREAS, the Shop Agreement provides for the payment over time by Mid America;

WHEREAS, Seller desires to transfer the Shop Agreement to Buyer and

WHEREAS, Buyer desires to acquire the Shop Agreement from Seller.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Seller conveys all of its right, title and interest to the Shop Agreement as of the date first written above to Buyer.

2. Buyer accepts all of Seller's right, title and interest to the Shop Agreement.

3. Seller represents and warrants to Buyer that:

a) Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and is qualified to do business in the State of Indiana;

b) Seller has the corporate power and authority to enter into this Agreement and carry out its obligations hereunder;

c) The execution, delivery and performance of this Agreement have been duly authorized and approved by all the necessary corporate actions of Seller and no further corporate proceedings of Seller are required to complete the transaction contemplated by this Agreement;

d) All of Seller's obligations set forth in this Agreement constitute legal, valid and binding obligations of Seller which are enforceable against Seller in accordance with their terms, except to the extent enforcement may be limited by bankruptcy, insolvency or reorganization law;

Exhibit B

e) There is no provision in the Certificate of Incorporation or By-Laws of Seller which prohibit the execution of this Agreement or consummation of the transaction contemplated by this Agreement;

f) The Shop Agreement is in full force and effect; has not been amended; a true and correct copy is attached hereto as Exhibit A and no event of default or with the passage of time would be an event of default has occurred.

4. Seller represents and warrants that it has obtained the consent of Mid America to its sale of all of its rights, title and interest in the Shop Agreement to Buyer.

5. Seller has not completed the property description for the Shop Agreement and Buyer agrees to complete the process at its sole cost and expense. Seller shall indemnify and hold Buyer harmless from any and all cost and expense, claim, action or litigation resulting from or related to the property description, as more completely set forth in Section 6 below.

6. Seller agrees to indemnify and hold Buyer harmless from an against all costs of claims, damages, judgments, costs of investigation and litigation, damages, judgments, awards, court costs, attorneys' fees, arising out of related to its representations and warrants contained herein.

7. This Agreement sets forth the entire agreement and understanding relating to the subject matter hereof and supersedes any and all proposals, communications, understandings and prior oral or written agreements relating thereto.

8. Time is of the essence.

9. Any modification, supplement or waiver of any provisions of this Agreement must be in writing and signed by the authorized representatives of each party.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in duplicate by their officers duly authorized as of the day, month and year first herein written.

EVANSVILLE TERMINAL COMPANY

By: Jack F. [Signature]
Title: VP Sales

RAILAMERICA, INC.

By: [Signature]
Title: [Signature]

QUITCLAIM DEED

THIS INDENTURE WITNESSETH, that RAILAMERICA, INC., a Delaware corporation ("Grantor"), QUITCLAIMS to HARWOOD PROPERTIES, INC., an Indiana corporation ("Grantee"), for the sum of Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor's interest in certain real estate located in Vanderburgh County, Indiana, which is more particularly described as follows (the "Real Estate"):

Part of the Northwest Quarter and part of the Southwest Quarter of Section 12, Township 6 South, Range 11 West in Vanderburgh County, Indiana, being more particularly described as follows:

Commencing at the northwest corner of the northeast quarter of the northwest quarter of said Section 12; thence along the west line of said quarter quarter section South 00 degrees 03 minutes 25 seconds East 425.67 feet to a point located 33.00 feet southwest of and perpendicular to the centerline of the mainline track, said point being the true point of beginning; thence along a line 33.00 feet southwest of and parallel to the mainline track South 25 degrees 14 minutes 00 seconds East 2425.73 feet to a point on the south line of the southeast quarter of the northwest quarter of said section 12; thence continue along a line 33.00 feet southwest of and parallel to the mainline track South 25 degrees 14 minutes 00 seconds East 379.50 feet; thence North 33 degrees 26 minutes 15 seconds West 409.72 feet to a point on the south line of the southeast quarter of the northwest quarter of said section 12; thence along said south line South 83 degrees 46 minutes 00 seconds West 127.56 feet to a point located 208.00 feet southwest of and parallel to the centerline of the mainline track, said point also being the eastern most corner of Kauai Industrial Park, recorded in Plat Book "K", page 166 in the office of the Recorder of Vanderburgh County, Indiana; thence along a line 208.00 feet southwest of and parallel to the centerline of the mainline track and also along the eastern most line of said Kauai Industrial Park, North 25 degrees 14 minutes 00 seconds West 1575.95 feet to the northeast corner of said Kauai Industrial Park; thence along the north line of said Kauai Industrial Park South 88 degrees 46 minutes 00 seconds West 170.02 feet to a point on the west line of the northeast quarter of the northwest quarter of said section 12; thence along said west line North 00 degrees 03 minutes 25 seconds

EXHIBIT C

West 776.48 feet to the true point of beginning and containing a Gross Area of 9.808 acres.

By acceptance of this Quitclaim Deed, Grantee hereby acknowledges and agrees that the Real Estate is being delivered by Grantor pursuant to this Quitclaim Deed in its "AS IS WHERE IS" condition, "WITH ALL FAULTS" and WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, including but not limited to any representation or warranty concerning the physical or environmental condition of the Real Estate or any improvements thereon or any right to ingress or egress to and from the Real Estate. By acceptance of this Quitclaim Deed, Grantee hereby waives any and all rights against Grantor with respect to the Real Estate which may arise under the Indiana Responsible Property Transfer Law (Ind. Code 13-25-3-1 et. seq.).

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed this 27th day of October, 2003.

RAILAMERICA, INC., a Delaware corporation

By: Larry W Bush
Printed: Larry W Bush
Title: Vice President - Treasurer

STATE OF Florida ,
COUNTY OF Palm Beach) SS:

Before me, a Notary Public in and for said County and State, personally appeared Larry W. Bush on behalf of RailAmerica, Inc., who acknowledged the execution of the foregoing Quitclaim Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 27th day of October, 2003.

My Commission Expires:
Dec 27, 2005

County of Residence:
Palm Beach

Kristin Dunlap
(signature)

Kristin Dunlap
(printed name)

Notary Public

Send tax statements to and
Grantee's mailing address is:

PERSONALLY KNOWN: X
PRODUCED I.D.: —

Harwood Properties, Inc.
1601 Allens Lane
Evansville, Indiana 47710



Kristin Dunlap
My Commission DD067887
Expires December 27, 2005

This instrument was prepared by Aaron J. Dixon, Ice Miller, One American Square, Box 82001, Indianapolis, Indiana 46282, Telephone: 236-2100.

INDY 1241680v2

QUIT-CLAIM DEED

THIS INDENTURE WITNESSETH that Mid-America Locomotive and Car Repair, Incorporated ("Grantor"), a corporation organized and existing under the laws of the State of Indiana, QUITCLAIMS to Harwood Properties, Incorporated ("Grantee"), a corporation organized and existing under the laws of the State of Indiana, for the sum of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Vanderburgh County, Indiana, to wit

See Attached Exhibit "A"

The undersigned person executing this deed represents and certifies that the undersigned is a duly elected officer of the grantor and has been fully empowered by proper resolution, or the by-laws of the grantor, to execute and deliver this deed; that the grantor is a corporation in good standing in the State of Indiana and, where required, in the State where the subject real estate is located; that the grantor has full corporate capacity to convey the real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken.

Grantor also transfers and assigns to Grantee its right of permanent access for movement between Harwood Yard and the CSXT lines located at MP 244.7, as the same is sold to Grantor by Evansville Terminal Company in a Purchase Agreement dated June 29, 1996. Grantor further transfers and assigns to Grantee all its rights and interest, including any easements or rights of access, ways of necessity or easements, by prescription or otherwise, of ingress or egress that may be determined to exist in a certain "Complaint to establish and quiet title to easement" which is now pending in the Vanderburgh Superior Court as Cause #82D03-0308-PL-3530 and entitled, "Mid-America Locomotive and Car Repair, Inc. v. Indiana Southwestern Railway, Co."

Grantor certifies that the above described real estate is not "property" as defined in I.C. 13-7-22.5-6. It has not been used as a landfill or dump, contains no underground gas storage tank(s) and contains no hazardous wastes. Thus, no disclosure statement as required by I.C. 13-7-22.5-1, et seq., is required.

IN WITNESS WHEREOF, Mid-America Locomotive and Car Repair, Incorporated has caused this deed to be executed this 23rd day of September 2003.

MID-AMERICA LOCOMOTIVE AND CAR REPAIR,
INCORPORATED

By: 
Bruce E. Knight
Its: President

EXHIBIT D

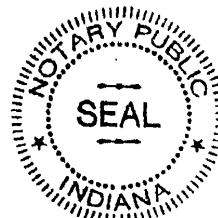
STATE OF INDIANA)
)SS:
COUNTY OF VANDERBURGH)

Before me, a Notary Public in and for said County and State, personally appeared Bruce E. Knight, the President of Mid-America Locomotive and Car Repair, Incorporated, who acknowledged execution of the foregoing Deed for and on behalf of said Grantor, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 20th day of, October 2003.

(Printed)
Notary Public

(Signed)
Jerry F. Jones
Jerry F. Jones



My commission expires: 08/14/2009
My county of residence: Vanderburgh

JERRY F. JONES
Notary Public, State of Indiana
No. 505802
Qualified in Vanderburgh County
Commission Expires August 14, 2009

This instrument was prepared by Marilyn R. Ratliff, Attorney at Law, 123 N.W. 4th Street; Suite 304, Evansville, Indiana 47708.

Send tax statements to Grantee at:

Harwood Properties, Inc.
1601 West Allens Lane, Suite B
Evansville, IN 47710

Exhibit "A"
To Quitclaim Deed
from
Mid-America Locomotive and Car Repair, Incorporated
to
Harwood Properties, Inc.

Part of the Northwest Quarter and part of the Southwest Quarter of Section Twelve (12), Township Six (6) South, Range Eleven (11) West, in Vanderburgh County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of the Northeast Quarter of the Northwest Quarter of said Section Twelve; thence along the West line of said Quarter Quarter Section South 00 degrees 03 minutes 25 seconds East Four Hundred Twenty-five and Sixty-seven Hundredths (425.67) feet to a point located Thirty-three (33) feet Southwest of and perpendicular to the centerline of the mainline track, said point being the true point of beginning; thence along a line Thirty-three (33) feet Southwest of and parallel to the mainline track South 25 degrees 14 minutes 00 seconds East Two Thousand Four Hundred Twenty-five and Seventy-three Hundredths (2,425.73) feet to a point on the South line of the Southeast Quarter of the Northwest Quarter of said Section Twelve (12); thence continue along a line Thirty-three (33) feet Southwest of and parallel to the mainline track South 25 degrees 14 minutes 00 seconds East Three Hundred Seventy-nine and Fifty Hundredths (379.50) feet; thence North 33 degrees 26 minutes 15 seconds West Four Hundred Nine and Seventy-two Hundredths (409.72) feet to a point on the South line of the Southeast Quarter of the Northwest Quarter of said Section Twelve (12); thence along said South line South 83 degrees 46 minutes 00 seconds West One Hundred Twenty-seven and Fifty-six Hundredths (127.56) feet to a point located Two Hundred Eight (208) feet Southwest of and perpendicular to the centerline of the mainline track, said point also being the Easternmost corner of Kauai Industrial Park, recorded In Plat Book "K", page 166, in the office of the Recorder of Vanderburgh County, Indiana; thence along a line Two Hundred Eight (208) feet Southwest of and parallel to the centerline of the mainline track and also along the Easternmost line of said Kauai Industrial Park, North 25 degrees 14 minutes 00 seconds West One Thousand Five Hundred Seventy-five and Ninety-five Hundredths (1,575.95) feet to the Northeast corner of said Kauai Industrial Park; thence along the North line of said Kauai Industrial Park South 88 degrees 46 minutes 00 seconds West One Hundred Seventy and Two Hundredths (170.02) feet to a point on the West line of the Northeast Quarter of the Northwest Quarter of said Section Twelve (12); thence along said West line North 00 degrees 03 minutes 25 seconds West Seven Hundred Seventy-six and Forty-eight Hundredths (776.48) feet to the true point of beginning and containing a Gross Area of 9.808 acres. And including all of Mid-America Locomotive and Car Repair, Incorporated's right, title and interest in and to the structures, improvements and appurtenances, including all tracks, rail, ties, ballast, roadbed, switches, and other track material.

Subject to all easements and rights-of-way of record.

Apr 16 04 10:18a

MID-AMERICA

LOCOMOTIV 812-421-1770

P. 4

Apr 13 04 03:13p

P. 2

FT ISW 8000-E
(Cancels 8000-D)

INDIANA SOUTHWESTERN RAILWAY CO.

FREIGHT TARIFF ISW 8000-E (Cancels ISW 8000-D)

NAMING RATES AND CHARGES COVERING SWITCHING

BETWEEN

AND

ALL STATIONS
ON THE
ISW

INTERCHANGE WITH CONNECTIONS
AT
EVANSVILLE, IN

GENERAL SWITCHING TARIFF

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with Particular items.

ISSUED: April 13, 2004, 2003

EFFECTIVE: APRIL 14, 2004

ISSUED BY:

Catherine Busch, Director of Marketing
INDIANA SOUTHWESTERN RAILWAY CO.
1318 So. Johanson Road
Peoria, IL 61607

(The provisions published herein, if effective, will not result in an effect on the quality of the human environment.)

EXHIBIT E

FT ISW 8000-E

(Cancels FT ISW 8000-D)

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS****ITEM 5 SUPPLEMENTS AND REISSUES**

When reference is made in this tariff, or supplements, to other publications for rates or other information, it includes "Supplements" thereto or successive issues thereof.

As this tariff is supplemented, numbered items with letter suffices cancel correspondingly number items in the original Tariff, or in a prior supplement. Letter suffices will be in Alphabetical sequence starting with A. Example: Item 100A cancels Item 100; and Item 300-B cancels Item 300-A in a prior supplement, which in turn cancelled Item 300.

ITEM 25 MILEAGE CHARGES ON PRIVATELY OWNED CARS

The ISW will not pay any mileage charges on privately owned or leased equipment when moving from, to, or via stations on the ISW.

**ITEM 30 CAR DEMURRAGE, DETENTION AND STORAGE
RULES AND CHARGES**

For rules and charges to apply, See Freight Tariff ISW 6004 series and Freight Tariff ISW 8998 series.

ITEM 40 NON-ABSORBED INTERMEDIATE SWITCH RATE

The rates listed herein do not absorb the intermediate switch rate between CSXT and NS. The ISW interchanges directly with CSXT at Evansville, IN.

**SECTION 1
SWITCHING****ITEM 1000 INTERCHANGE SWITCHING**
(See Notes 1,2,3,4,5,6 and 7 for this item)

The Indiana Southwestern Railway Co. (ISW) will perform switching between industries located at stations shown below and interchange with CSXT (Direct) and NS (via intermediate switch) at Evansville, IN at the Charges indicated below:

(Charges are in Dollars and Cents per Cars, unless otherwise noted)

STATION	INDUSTRY	COMMODITY	INTERCHANGE	CHARGE
Evansville, IN	Mid America Locomotive and Car Repair Shop	Rail cars (other than locomotives, cabooses, and passenger cars)	CSX	\$ 250.00 (includes in & out)
			NS	\$ 250.00 (includes in & out)
		Locomotives	CSX	\$1,500.00 (includes in & out)
			NS	\$1,500.00 (includes in & out)
		Cabooses and Passenger cars	CSX	\$1,000.00 (includes in & out)
			NS	\$1,000.00 (includes in & out)

Note 1: These charges apply only when customer is physically served by ISW. Intermediate switch charges will apply as noted in Item 2000.

Note: Switch charges for empty railcars, locomotives, and passenger cars will be billed to Mid America Locomotive at first move by ISW.

Switch charge monies are due and payable to ISW within 15 days of receipt of invoice, and/or all charges to be "PAID IN FULL" prior to rail cars moving offline.

*Loaded cars destined to Mid America Locomotive for the account of GE Plastics, will incur the \$250 switch charge with charges due and payable as follows: \$200.00 of the switch charge will be assessed against and billed to CSX; \$50.00 will be assessed against and billed to Mid America Locomotive. All switch charges will be billed at time of the inbound move or upon first move by ISW.

Cars will not be considered released, AND NO CARS WILL MOVE OFF LINE, UNTIL ALL CHARGES FOR SERVICES ARE "PAID IN FULL".

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SECTION 1 **SWITCHING** (continued)

ITEM 1000 - continued

INTERCHANGE SWITCHING (See Notes 1,2,3,4,5,6 and 7 for this item)

STATION	INDUSTRY	COMMODITY	INTERCHANGE	CHARGE
Evansville, IN	GE Plastics	Loads being held in storage on ISW owned tracks (if furtherance to Mt. Vernon, IN)	CSX	\$ 200.00 (includes in & out)

Note: Charges for switching of empties being held in storage as well as storage charges will be billed to GE Plastics.

Evansville, IN	All Other Industries	Freight, all kinds, except fertilizer and grain - See Note 7	CSX	\$ 530.00
			NS	\$ 530.00

Poseyville, IN	All Industries	Freight, all kinds, except fertilizer and grain - See Note 7	CSX	\$ 530.00
			NS	\$ 530.00

Cynthiana, IN	All Industries	Freight, all kinds, except fertilizer and grain - See Note 7	CSX	\$ 530.00
			NS	\$ 530.00

Note: The above charges apply only when customer is physically served by ISW. Intermediate switch charges will apply as noted in Item 2000.

ITEM 2000

INTERMEDIATE SWITCHING RATES

Application and Definition of Intermediate Switching

A switching movement of cars from the interchange tracks of one connecting carrier to the interchange tracks of another connecting carrier with the switching limits of the same station on which the switch carrier neither originates nor terminates the shipment nor receives a line-haul.

Charges Indicated Below:

(Charges are in Dollars and Cents per car, unless otherwise noted.)

STATION	COMMODITY	RATE
Evansville, IN	Freight All Kinds, not including cabooses, passenger cars and locomotives. Also - See Note 7.	\$ 250.00
	Locomotives	\$1500.00
	Cabooses and Passenger Cars	\$1000.00

Note: Rates apply in each direction on all movements, loaded or empty. Such charge will be assessed against the carrier handing off the car to the ISW, and will apply on loads and empties.

Note 1 - On all moves involving loaded cars, switch charges will be assessed against and billed to the connecting carrier.

See exception * for loaded cars moving to Mid America for account of GE Plastics.

Note 2 - No switching charges of the line haul charges will be absorbed by the ISW.

Note 3 - For cars moving to/from ISW, intermediate switch charges for cars moving between NS and CSX at Evansville, IN will not be absorbed by the ISW.

Note 4 - All charges will be "paid in full"; or acceptable arrangements will have been made for payment prior to final movement (inbound/outbound) of rail cars on/off ISW.

Note 5 Subject to Rule 5 - Switching Car Hire Expense recovery - Code of Car Hire Rules and Interpretation as published in the Official Railway Equipment Register - Circular O-1 - 10

Note 6- For grain switching rates to apply, see Freight Tariff ISW 8001. For fertilizer rates to apply, see Freight Tariff ISW 8002.

Note 7 - Above switch charges do not cover dimensional-hi-wide loads/heavy loads/loads requiring lvy duty or special equipment. Contact ISW Marketing for charges (309) 697-1400.

II. LEGAL ARGUMENT

ISW HAS FAILED TO PROVIDE ANY BASIS ON WHICH TO REJECT,
REVOKE OR STAY OVR's VERIFIED NOTICE OF EXEMPTION.

A. OVR's Notice of Exemption describes a transaction within the Board's jurisdiction under 49 U.S.C. §10901. The class exemption procedures issued by the Board in 49 C.F.R. §1150.31 state that "this exemption applies to all acquisitions and operations under §10901." Under 49 U.S.C. §10901, a person may acquire or operate an extended or additional railroad line only with Board authorization, either in the form of a certificate of public convenience and necessity or an exemption. However, the Board does not have licensing authority under §10901 over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks. 49 U.S.C. §10906. Section 10906 does not define what constitutes "spur, industrial, team, switching or side tracks." Where, however, the operations at issue would constitute the carrier's entire line of railroad, enabling it to serve shippers in territory it had not previously served, the STB has held that the larger purpose and effect of transactions such as the one proposed by OVR is to create a new common carrier by rail. The track thus dedicated is therefore deemed, for the purposes of the transaction, to be a line of railroad, and not excepted side, spur, industrial, team or switching track.

Texas Central Business Lines Corporation – Operation Exemption – Mid Texas International Center, STB Finance Docket No. 33997 (September 20, 2002) citing Effingham Railroad Company – Petition for Declaratory Order – Construction at Effingham, IL, 2 S.T.B. 606 (1997), Aff'd Sub. Nom. United Transportation Union v. STB, 183 F. 3d 606, 613 (7th Circuit 1999)

OVR prior to its Notice of Exemption was not a rail carrier and therefore sought exempt authorization from the Board to acquire its entire railroad line under §10901 (a)(4). The effect of OVR's acquisition of the Harwood Yard trackage is to open new territory so OVR can provide continuous transportation service by through trains between Harwood Yard and different points. Union Pacific Railroad Company – Operation Exemption – In Yolo County, CA, STB FD 34252 (Dec. 5, 2002)

Although ISW argues that it presently serves Harwood Yard, in fact, ISW has no STB operating authority to conduct rail services in Harwood Yard. It only has authority to operate two connecting lines of railroad in Vanderburgh and Posey Counties including 17.2 route miles from Evansville to Poseyville previously owned by Evansville Terminal Company and 4.6 route miles from Poseyville to Cythiana acquired from AB Rail Investments, Inc. See Order dated March 28, 2003, STB Finance Docket No. 33859 Indiana Southwestern Railway Company – Acquisition and Operation Exemption – Evansville Terminal Company, Inc. and AB Rail Investments, Inc. ISW tried to purchase Harwood Yard for its common carrier rail operations from MALX but those parties were unable to agree on purchase terms.

Accordingly, ISW's attempts to characterize the tracks acquired by OVR from Harwood Properties, Inc. as private excepted yard track is simply not correct. OVR properly used the Board's class exemption procedures seeking STB exemption authorization under 49 U.S.C. §10901 to recommence common carrier rail operations in Harwood Yard.

B. Use of the STB class exemption procedures is appropriate and required for this acquisition proceeding even if Harwood Yard is deemed to be excepted track. As noted in Part A above, OVR has acquired a lease hold interest in Harwood

Yard from Harwood Properties, Inc. for the purpose of providing common carrier rail service. But even if the Harwood Yard rail facilities were excepted track under 49 U.S.C. §10906, OVR intends to offer significantly different rail service that goes far beyond ancillary switching services. OVR will hold out rail service not just to a single plant or shipper, but to the public at team tracks and to other shippers who may choose to locate in or use the yard facilities to ship or receive rail freight in through service. Thus, OVR's proposed and intended operation of the Harwood Yard facilities are consistent with past use of those facilities by Illinois Central Gulf Railroad Company, Indiana Hi Rail, and Rail America and with the common carrier obligations to which the Harwood Yard rail facilities remain subject.

Nor do the cases cited by ISW pertain to this transaction. In Union Pacific Railroad Company – Operation Exemption – In Yolo County, CA, STB Finance Docket No. 34252, the Board granted the Yolo Shortline Railroad Company's petition to reject the Notice of Exemption filed by UP because it was clear in that proceeding that UP was trying to use the Board's class exemption regulations to block the efforts of the Yolo Shortline Railroad Company to undertake its own common carrier operations over approximately 6.3 miles of track. Similarly, in both the Jefferson Terminal Railroad Company – Acquisition and Operation Exemption – Crown Enterprises, Inc., STB Finance Docket No. 33950 (March 19, 2001) and Riverview Trenton Railroad Company – Acquisition and Operation Exemption – Crown Enterprises, Inc., Finance Docket 34040 (February 15, 2002) the Board found that applicants' use of the class exemption procedures appeared to be a device to acquire and retain property for nonrail purposes using federal preemption as a shield against local condemnation proceedings. To prevent a possible abuse of its procedures, the Board revoked the Notice of Exemption and

rescheduled these matters for more thorough regulatory scrutiny. These cases have nothing in common with the efforts by OVR to reestablish common carrier rail service in Harwood Yard.

If Harwood Yard is excepted track (and OVR believes it is not) OVR's notice of exemption would be governed by Arkansas Central Railway Company, Inc. – Operation Exemption – Line of Hertzog Stone Products, Inc., STB Finance Docket No. 31405 (May 31, 1989) and Texas Central Business Lines Corporation – Operation Exemption – Mid Texas International Center, STB Finance Docket No. 33997 (September 20, 2002). In Arkansas Central, the Commission allowed a new railroad to obtain a license to operate over 1.3 miles of track that had been an industrial spur in the past because the railroad demonstrated that its use of the track would be substantially different – it would no longer be used for storage but would instead be used for through movements of trains. See Arkansas Central at 2. Similarly, in Texas Central the STB found that the track at issue was subject to its licensing authority because, as in the case with OVR, the track constituted the acquiring carrier's entire line of railroad, enabling it to serve shippers in territory it had not previously served. See Texas Central at 2. Given these factual and legal distinctions, it is evident that the objections raised by ISW have no merit.

C. The OVR Notice of Exemption Meets the Requirements of 49 C.F.R., 1150.33.

As is clearly evident from OVR's Notice of Exemption, OVR has sought authority from the Board to both acquire (by lease) and operate the Harwood Yard property as a common carrier railroad. ISW apparently fails to perceive that one may acquire a leasehold interest in a rail line for purposes of rail operation and that acquisition is not limited solely to purchase transactions. Similarly, it is quite clear from

the OVR Verified Notice of Exemption that OVR will be both the acquiring and operating entity of the tracks in question. Moreover, the absence of mile post designators does not make the notice of exemption materially misleading and, has nothing to do with the common carrier status of the track in question. See e.g. Yolo Short Line Railroad Co. – Acquisition and Operation Exemption – County of Sacramento, CA, STB FD. 34018 (March 27, 2001). Furthermore, the maps submitted by OVR indicate the location of the tracks to be acquired and operated and their relationship to other carriers. Indeed it is disingenuous for ISW to complain that one cannot locate where OVR tracks end when in fact, those points are the lead tracks at the north and south end of the yard which connect to ISW's own tracks. Thus, not only is OVR's notice of exemption not misleading, it fully responds to and provides the information required by the Board's regulations.

D. ISW has not met the standards for a stay.

ISW has failed to meet the standards to obtain a stay in this proceeding. To obtain an administrative stay, ISW must show: (1) that there is a strong likelihood that it will prevail on the merits; (2) that it will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958) (Petroleum Jobbers). It is ISW's obligation to justify the exercise of such an extraordinary remedy, Cuomo v. United States Nuclear Regulatory Comm., 772 F.2d 972, 978 (D.C. Cir. 1985), and ISW carries the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974), FL&L Railway, Inc. – Acquisition and

Operation Exemption – T.P.&W. between LaHarpe and Peroria, IL, STB Finance Docket 33995, February 6, 2003. Here, ISW has failed to demonstrate that it is entitled to a stay under any of these criteria.

As demonstrated in parts A and B above, there is no likelihood that ISW will prevail on the merits. OVR has invoked the Board's class exemption procedures in connection with a rail transaction through which it will acquire its entire rail line which was previously used in common carrier rail service and which is subject to a continuing common carrier obligation. The rail services which OVR intends to provide will involve the origination and termination of through transportation services on behalf of multiple shippers utilizing the Harwood Yard rail facilities.

The fact that ISW does not want OVR to be inserted as a common carrier railroad in through routes to and from Harwood Yard must be considered in light of ISW's unwillingness to agree on terms with MALX to acquire the Harwood Yard property for itself. Having failed to capitalize on that opportunity, ISW cannot now be heard to complain if OVR acquires and operates Harwood Yard for its own account.

ISW has made no evidentiary demonstration of irreparable harm and in fact any harm which ISW may suffer is purely monetary and ineligible for injunctive relief. (See Petroleum Jobbers, 259 F. 2d at 925). The contention that OVR would not be harmed by a stay cannot be taken at face value. OVR was formed solely and exclusively to provide common carrier rail service at Harwood Yard. A stay would force OVR to engage in a longer regulatory proceeding which would entail the production of additional evidence and the additional costs associated with obtaining STB acquisition and operation authority in a nonexempt proceeding.

Finally, there is no public interest in granting a stay. The public interest is served by facilitating entry into the rail industry and permitting private parties to use their own business judgment and assume normal business risks associated with the provision of common carrier rail freight service to the public.

In light of these considerations, ISW has failed to provide any basis for granting a stay in this proceeding.

III. CONCLUSION

OVR has demonstrated that its use of the Board's §10901 class exemption in this proceeding is justified and appropriate. ISW comes to the Board in the position of a rejected suitor whose own offer to acquire the Harwood Yard property was declined. The notice of exemption filed by OVR satisfies the statutory criteria of 49 U.S.C. §10901 and the Board's class exemption procedures. It will permit renewed common carrier rail services at Harwood Yard and will thereby afford improved and expanded common carrier rail transportation services to the public.

Accordingly, ISW's petition to reject, revoke or stay should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of May, 2004, served a true and correct copy of the foregoing Reply of Ohio Valley Railroad Company to the Petition of Indiana Southwestern Railway Company to Reject or Revoke and/or Petition for Stay upon the following parties listed below by first class mail, postage prepaid:

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