

Reso.

2012-0132

**INTRODUCED BY: V.J. ST. PIERRE, JR., PARISH PRESIDENT
(DEPARTMENT OF PUBLIC WORKS)**

RESOLUTION NO. 5902

A resolution in support of an Act of Servitude by
Kansas City Southern Railway Company to
St. Charles Parish.

WHEREAS, St. Charles Parish is working to improve the drainage in the Montz area;
and,

WHEREAS, said project includes work within the Kansas City Southern Railway right
of way; and,

WHEREAS, Kansas City Southern has agreed to grant a servitude to St. Charles
Parish to facilitate this project.

**NOW, THEREFORE, BE IT RESOLVED, THAT WE, THE MEMBERS OF
THE ST. CHARLES PARISH COUNCIL**, do hereby approve of and authorize the Act of
Servitude by Kansas City Southern Railway Company to St. Charles Parish in order to
facilitate the Montz Drainage Improvement Project.

BE IT FURTHER RESOLVED that the Parish President is hereby authorized to execute
said Act of Servitude and to act on behalf of St. Charles Parish in all matters pertaining
to this project.

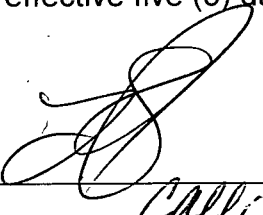
The foregoing resolution having been submitted to a vote, the vote thereon was
as follows:

YEAS: SCHEXNAYDRE, FAUCHEUX, WILSON, TASTET, BENEDETTO, HOGAN,
COCHRAN, FLETCHER, NUSS

NAYS: NONE

ABSENT: NONE

And the resolution was declared adopted this 26th day of March, 2012,
to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: 

ACTING SECRETARY: Calli Mader

DLVD/PARISH PRESIDENT: 3-27-12

APPROVED: ☒ DISAPPROVED: ☐

PARISH PRESIDENT: 

RETD/SECRETARY: 3-28-12

AT: 8:55am RECD BY: CFM

**RECORDED IN THE ST. CHARLES PARISH
CLERK OF COURT OFFICE**

ON April 5, 2012

AS ENTRY NO. 377986

IN MORTGAGE/CONVEYANCE BOOK

NO. 769 FOLIO 809

ACT OF SERVITUDE

BY: THE KANSAS CITY SOUTHERN RAILWAY COMPANY

TO: St. Charles ParishUNITED STATES OF AMERICA
STATE OF MISSOURI
COUNTY OF JACKSON

BE IT KNOWN, That on Feb. 21, 2012, BEFORE ME, Barbara S. Dennis, a Notary Public duly commissioned and qualified, in and for the County and State aforesaid ("Notary No. 1"), and in the presence of the witnesses hereinafter named and undersigned personally came and appeared THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation, authorized to do and doing business in the State of Louisiana, to be addressed at 427 West 12th Street, Kansas City, Missouri 64105-1804, said corporation being herein represented by Glen Ebeling, its Assistant Vice President – Real Estate and Industrial Development, duly authorized by resolution of the Board of Directors, hereinafter referred to as VENDOR; and

UNITED STATES OF AMERICA
STATE OF LOUISIANA
PARISH OF St. Charles

BE IT FURTHER KNOWN, That on March 30, 2012, BEFORE ME, LEON C. VIAL III, a Notary Public duly commissioned and qualified, in and for the Parish and State aforesaid ("Notary No. 2"), and in the presence of the witnesses hereinafter named and undersigned personally came and appeared St. Charles Parish, a ^{Government agency} ~~Louisiana corporation~~, domiciled in St. Charles Parish, Louisiana, said corporation being herein represented by V. J. St. Pierre, Jr., its President, duly authorized by Resolution on March 26, 2012, a copy of which is attached hereto and made a part hereof, hereinafter referred to as VENDEE.

VENDOR declared that in consideration of the mutual benefits to be derived, the sufficiency of which shall be forever recognized, VENDOR does by these presents GRANT unto VENDEE, its successors and assigns, a non-exclusive servitude, to be used solely for drainage purposes, in the following described property, to-wit:

(See legal description attached and marked "EXHIBIT
"A" and survey plat attached and marked EXHIBIT
"B")

As further consideration of this servitude grant, VENDEE agrees to keep all men, materials and equipment at least 25 feet from the centerline of any railroad track located on the VENDOR's property at all times except when a qualified railroad flagman is present on the site, not to undermine or destabilize any railroad structure or embankment by work of or on behalf of VENDEE nor to otherwise interrupt or disturb VENDOR'S use and enjoyment of the property, and to otherwise adhere to the Construction and Maintenance Agreement entered between VENDOR and VENDEE of even date herewith.

VENDEE agrees to pay reasonable damages for physical damage, if any, to fences, track, ties, ballast or other structural improvements located outside the above-described servitude which are caused by maintenance, operation, repair, alteration, replacement or removal of said drainage improvements and appurtenant facilities, to the maximum extent permitted under Louisiana law. VENDEE reserves the right to dispute any claim for damages.

VENDEE may assign its rights under this instrument but only with VENDOR'S prior written consent, which shall not be unreasonably withheld or denied. VENDOR may freely transfer its interest in the property subject to this instrument. This servitude and all rights and obligations stated herein shall run with the land for the benefit of the VENDEE, its successors and permitted assigns.

Except as expressly provided in this instrument, VENDOR reserves all right, title and interest in and to the property described in Exhibits A and B. Without limiting the foregoing, VENDOR expressly reserves the right to construct additional facilities, admit additional parties to the property, and make any other use of the surface of the property and the substrata of the property which does not materially interfere with VENDEE'S use and enjoyment of this easement. It is hereby expressly understood and agreed by VENDOR and VENDEE that the placement and operation of additional railroad tracks within VENDOR's right of way lying within the scope of this servitude, by VENDOR or by others, shall not be considered a material interference with VENDEE's use and enjoyment of its servitude. Should any protection of the drainage improvements be required due to VENDOR'S use and enjoyment of the property for railway and related

purposes, VENDEE shall promptly install such protection and make any other required modifications at VENDEE'S sole expense.

TO HAVE AND TO HOLD unto the said VENDEE, its successors and permitted assigns, for so long as said servitude and right-of-way is used by VENDEE for the purposes stated above. However, VENDEE shall have the right to abandon and terminate all or any part of the rights granted herein, by filing a release of same with VENDOR and in the Parish records and removing the pipeline from the property in a manner reasonably acceptable to VENDOR. Additionally, said servitude and right-of-way shall terminate if and when VENDEE ceases use of said servitude and right-of-way and the appurtenant facilities situated thereon, for a continuous period of one (1) year. Should this servitude terminate for lack of use, then VENDEE shall, at VENDOR'S request and at VENDEE'S expense, remove the pipeline from the property in a manner reasonably acceptable to VENDOR.

The parties hereto do hereby waive and dispense with the production of any and all certificates and/or researches otherwise required by law, and relieve and release both Notaries, and the sureties on their respective notarial bonds, from any and all responsibility in connection therewith.

THUS DONE AND PASSED in my office in Kansas City, Missouri, in the presence of Raymond Modhlman and Tammie Parish competent witnesses, who hereunto sign their names with the said appearer and me, Notary No. 1, after reading the whole, this 27th day of February, 2012.

WITNESSES:

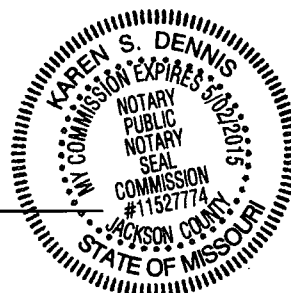
Raymond W. Modhlman
Tammie Parish

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY

By Glen Ebeling
Glen Ebeling
AVP - Real Estate & Ind. Dev.

Karen S. Dennis
Notary Public

My Commission expires 5/2/2015



THUS DONE AND PASSED in my office in Hahnville,
in the presence of Anedra Coleman and Calli Madere,
competent witnesses, who hereunto sign their names with the said appearer and me,
Notary No. 2, after reading the whole, this 30th day of March,
_____, 2012.

WITNESSES:

Anedra Coleman

Calli Madere

St. Charles Parish
By VJ St. Pierre

(Name printed) VJ St. Pierre
(Title) Parish President

[Signature]
Notary Public # 58825

My Commission expires at death

**Legal Description
Drainage Servitude
Parcel KCS-DS1**

That piece or portion of ground being a Drainage Servitude being Parcel KCS-DS1 being a portion of portion B of the L. N. Bougere Tract. Situated in Section 53, T-12-S, R-8-E, Montz, St. Charles Parish, Louisiana. All in accordance with a exhibit plat by Stephen P. Flynn, P.L.S. dated September 22, 2011, revised December 19, 2011 and being more fully described as follows:

Beginning at a point said point being the southeast intersection of the L.&A. Railroad and Evangeline Road thence proceed in a southeasterly direction along the north line of Parcel KCS-DS1 along a non tangent curve to the right with a radius of 7074.55, a curve length of 82.40 and a chord bearing of S51°41'30"E a distance of 82.40' to a point;

Thence proceed in a southeasterly direction along the north line of Parcel KCS-DS1 a bearing of S42°13'20"E a distance of 90.72' to a point;

Thence proceed in a southeasterly direction along the north line of Parcel KCS-DS1 a bearing of S52°53'34"E a distance of 282.59' to a point;

Thence proceed in a southwesterly direction along the east line of Parcel KCS-DS1 a bearing of S36°51'33"W a distance of 37.03' to a point;

Thence proceed in a northwesterly direction along the south line of Parcel KCS-DS1 a bearing of N50°06'03"W a distance of 455.64' to a point;

Thence proceed in a northeasterly direction along the east right of way of Evangeline Road along a non tangent curve to the left with a radius of 7106.55, a curve length of 33.37 and a chord bearing of N38°30'45"E a distance of 33.37' to a point;

The Point of Beginning

**Legal Description
Drainage Servitude
Parcel KCS-DS2**

That piece or portion of ground being a Drainage Servitude being Parcel KCS-DS2 being a portion of Tract E of Lot 1 of the William Keller Heirs . Situated in Section 51, T-12-S, R-8-E, Montz, St. Charles Parish, Louisiana. All in accordance with a exhibit plat by Stephen P. Flynn, P.L.S. dated September 22, 2011, revised December 19, 2011 and being more fully described as follows:

Commencing at a point said point being the southeast intersection of the L.&A. Railroad and Evangeline Road thence proceed in a southeasterly direction along the north line of Parcel KCS-DS1 along a non tangent curve to the left with a radius of 7074.55, a curve length of 82.40 and a chord bearing of S51°41'30"E a distance of 82.40' to a point;

Thence proceed in a southeasterly direction along the north line of Parcel KCS-DS1 a bearing of S42°13'20"E a distance of 90.72' to a point;

Thence proceed in a southeasterly direction along the north line of Parcel KCS-DS1 a bearing of S52°53'34"E a distance of 282.59' to a point;

The Point of Beginning

Thence proceed in a southeasterly direction along the north line of Parcel KCS-DS2 a bearing of S52°53'34"E a distance of 188.39' to a point;

Thence proceed in a northeasterly direction along the north line of Parcel KCS-DS2 a bearing of N38°17'02"E a distance of 19.23' to a point;

Thence proceed in a southeasterly direction along the north line of Parcel KCS-DS2 a bearing of S51°08'30"E a distance of 299.12' to a point;

Thence proceed in a southeasterly direction along the north line of Parcel KCS-DS2 a bearing of S16°49'31"E a distance of 63.54' to a point;

Thence proceed in a southeasterly direction along the north line of Parcel KCS-DS2 a bearing of S50°02'33"E a distance of 96.01' to a point;

Thence proceed in a southwesterly direction along the north line of Parcel KCS-DS2 a bearing of S39°57'27"W a distance of 5.00' to a point;

Thence proceed in a southeasterly direction along the north line of Parcel KCS-DS2 a bearing of S50°03'02"E a distance of 243.48 to a point;

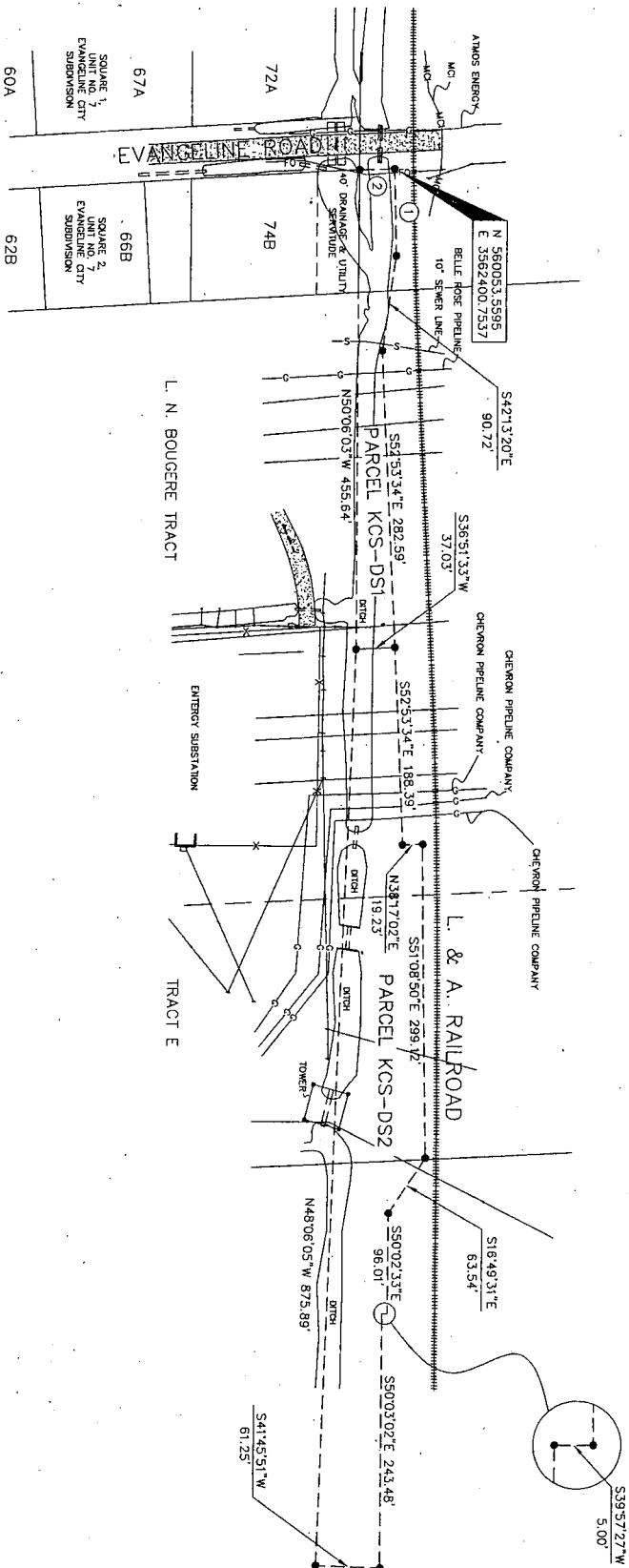
Thence proceed in a southwesterly direction along the east line of Parcel KCS-DS2 a bearing of $S41^{\circ}45'51''W$ a distance of 61.25 to a point;

Thence proceed in a northwesterly direction along the south line of Parcel KCS-DS2 a bearing of $N48^{\circ}06'05''W$ a distance of 875.89' to a point;

Thence proceed in a northeasterly direction along the west line of Parcel KCS-DS2 a bearing of $N36^{\circ}51'33''E$ a distance of 37.03' to a point;

The Point of Beginning

EXHIBIT "B"



- ① L=82.40'
R=7074.55'
Ch=S51°41'30"E 82.40'
- ② L=33.37'
R=7106.55'
Ch=N38°30'25"E 33.37'



RIVERLANDS SURVEYING COMPANY	
505 BENDIGO STREET LAUREL, LA 70002 (504) 682-0000	
STEPHEN P. RIVERLAND REGISTERED SURVEYOR NO. 1490	
PROJECT NO. 1 OF 1	
SHEET NO. 1 OF 1	
DATE: 08/24/2001	
DRAWN BY: JRM	
CHECKED BY: JRM	
PLS. TX. ST. REG. NO. 1658	

TITLE: EXHIBIT "B" TO SHOW DRAINAGE EVIDENCE PARCELS KCS-DS1 AND KCS-DS2
LOCATED IN SQUARE 1, UNIT NO. 7, EVANGELINE CITY SUBDIVISION
NORTH, ST. CHARLES PARISH, LOUISIANA
DATE: SEPTEMBER 22, 2001

CONSTRUCTION AND MAINTENANCE AGREEMENT

FOR

DRAINAGE FACILITY BY AND BETWEEN THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND ST. CHARLES PARISH

This CONSTRUCTION AND MAINTENANCE AGREEMENT ("Agreement") is entered into and effective this ____ day of _____, 2012, by and between THE KANSAS CITY SOUTHERN RAILWAY COMPANY ("KCSR"), a Missouri corporation, and ST. CHARLES PARISH ("USER"), (KCSR and USER being sometimes referred to herein individually as a "Party" or together as the "Parties).

WHEREAS, KCSR has agreed to grant to USER, concurrently with the effective date of this Agreement, a non-exclusive servitude solely for drainage purposes upon, across and beneath KCSR's railroad property, track and facilities in St. Charles Parish, Louisiana; and

WHEREAS, in order to preserve the safety of persons and property during the use of said servitude by USER, its permitted successors and assigns, KCSR and USER desire to set forth the terms under which USER may construct, operate, maintain and remove its drainage facilities within said servitude;

NOW, THEREFORE, KCSR and USER hereby enter this Agreement to govern User's use of said servitude.

1. USER's use and enjoyment of the servitude granted by KCSR shall not interrupt or disturb KCSR'S use and enjoyment of its property. All railroad tracks within and adjacent to the project site are active, and rail traffic over these facilities shall be maintained throughout the project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations will occur continuously throughout the day and night on the tracks. The USER shall coordinate and schedule the work so that construction activities do not interfere with railroad operations. Any and all costs associated with delays caused to the train traffic by the USER shall be reimbursed to KCSR by the USER.

KCSR may freely transfer its interest in the property subject to this instrument, and may admit other parties and persons to its property so long as such admission does not have a material adverse effect on USER'S use and enjoyment of its servitude, it being expressly understood that USER'S servitude is non-exclusive.

2. USER shall provide KCSR with all engineering drawings, specifications and plans governing such maintenance, repair, replacement, alteration, and removal. No work shall be undertaken to maintain, repair, replace, alter or remove the drainage improvements without KCSR'S written approval, said approval not to be unreasonably withheld.

3. USER shall be solely responsible for ensuring that KCSR's property, both within and outside the servitude, is safe for the entry of USER's employees, agents and contractors, including without limitation that the property is free of conditions that may cause injury or death to persons or damage or destruction to property.
4. USER shall keep all personnel, materials and equipment of User, its agents and contractors at least 25 feet from the centerline of any track located on the KCSR's property at all times except when a qualified railroad flagman is present on the site.

The KCSR will consult with the USER concerning any flagging services that will be required during the course of the Project, but the USER shall make all arrangements for flagging protection directly with a railroad-qualified flagging contractor. KCSR's designation of a flagging contractor as a "railroad-qualified" flagging contractor shall be construed solely as KCSR's willingness to allow that flagging contractor to provide flagging services on KCSR's property without further proof of qualification, and shall not be construed as an endorsement or other verification of the abilities or qualifications of that flagging contractor. Under these railroad requirements, all flagging contractors utilized on the Project shall be treated solely as independent contractors of the USER for all purposes under these railroad requirements.

The USER shall contract directly with any of the railroad-qualified flagging contractors and pay them directly. The USER shall provide at least one month's notice prior to the first use of flaggers. Current railroad-qualified flagging contractors are:

<p>Railroad Protective Services 2001 Ryan Road Saint Augustine, FL 32092 Patsy Crisafi 904-296-8088 (Office) 904-813-9905 (Cell) pjcrisafi@aol.com</p> <p>Alternate Contact David Schaffer 904-588-3433 drsshaffer@aol.com</p>	<p>Rail Pros, Inc. 25 Mauchly Drive, Suite 329 Irvine, CA 92618 Donna Beasley 318-938-2815, Ext. 3 (Office) 714-900-9270 (Cell) 866-762-7619 (Fax) Donna.Beasley@railpros.com</p> <p>General e-mail flagging@railpros.com</p> <p>Alternate Contact Johnny Johnson 949-278-8637 (Cell) johnny.johnson@railpros.com</p>
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5. All USER's employees and supervisors who will routinely perform work within the KCSR's ROW, except any personnel employed or assigned by a Railroad-qualified flagging contractor, shall be trained with reference to the KCSR's On Track Safety Rules and General Code of Operating rules. USER shall provide the accommodations for this

classroom training at its own expense, and shall pay any and all applicable fees for this training by a Railroad certified training consultant. The training consultant can be contacted at:

TrackSense Inc.
308 Durst Dr. Warren, OH 44483
Phone: (330) 847-8661; Cell: (330) 219-4721;
Attention: Larry Slater
Email: lslater@neo.rr.com

6. The USER shall be required to take special precautions and care in connection with excavating and shoring. Excavations for construction of facilities that require shoring shall comply with requirements of OSHA, AREMA and KCSR's Guidelines.

Before performing any excavation, demolition, blasting, lifting of structural members or construction of falsework on or over KCSR's ROW or adjacent to the KCSR's ROW that may interfere with the safe operation of the trains, the USER shall submit its excavation, shoring, demolition, blasting, lifting of structural members and falsework plans and relevant procedures to the KCSR's Engineer for review and approval. These plans and procedures shall be signed and sealed by a Professional engineer licensed in the State of Louisiana. However, such approval shall not relieve the USER from any liability relating to this project. During the course of the project, the USER shall submit any proposed changes to the approved plans or procedures to the KCSR Engineer for review and approval. Any clearing and grubbing to increase the sight distance for a safer construction operation, or erection of temporary structures within the KCSR's property shall not be done prior to the approval of the KCSR.

7. The USER shall strictly abide by the following minimum temporary clearances during the course of construction:
 - i. 14 feet horizontal from centerline of track
 - ii. 22 feet vertical above top of rail.
8. USER shall contact KCSR's Engineer at least 5 days in advance of construction in order that arrangements can be made for a KCSR representative to be present during excavations or such work that disturbs the integrity of the track structure. Following construction, USER shall give KCSR at least 24 hours' notice prior to entering onto KCSR's property; except in an emergency situation, in which event the maximum possible notice consistent with the nature of the emergency will be given to KCSR prior to USER's entry onto KCSR's property.
9. Prior to entering KCSR's property, the USER shall obtain a Right of Entry Permit from the KCSR by paying any and all fees by contacting:

Sylvia Schmidt
Jones Lang Lasalle

3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131
Ph: 817-230-2688
Email: Sylvia.Schmidt@am.jll.com

10. After completion of construction and any maintenance or removal of its drainage facilities, USER return the grounds to the conditions as existed prior to start of work. In the event the USER shall fail to restore the KCSR's property immediately to a condition acceptable to KCSR when any damage to KCSR's property is called to the USER's attention by the KCSR, KCSR may perform such corrective work at the cost of the USER. The term "loss or damage" as used herein shall include, but not be limited to, the erosion and silting of, water damage to, and the accidental or intentional placing or dropping of objects on the KCSR's property.
11. The USER shall notify KCSR of the completion of work on KCSR's ROW within 30 days after the completion of work on KCSR's ROW. KCSR shall inspect its property within 30 days after the USER has given this notice, to verify the USER's compliance with these requirements. KCSR shall notify the USER of any outstanding issues to be addressed on KCSR's ROW. USER will notify the USER's contractor of work to be completed.
12. USER agrees to pay reasonable damages determined as provided herein for any physical damage, if any, to timber, fences, track, ties, ballast or other structural improvements located within or outside the servitude granted to USER by KCSR concurrently herewith which are caused by maintenance, operation, repair, alteration, replacement or removal of said drainage improvements and appurtenant facilities, but only to the extent permitted under the provisions of Louisiana law.
13. USER may assign its rights under this instrument but only with KCSR'S prior written consent, which shall not be unreasonably withheld or denied.
14. **IN CONSIDERATION OF THE RIGHTS AND OBLIGATIONS GRANTED HEREIN, USER HEREBY EXPRESSLY AGREES TO DEFEND, INDEMNIFY AND SAVE HARMLESS KCSR, AND OTHER RAILWAY COMPANIES OPERATING OVER, OR USING TRACKS OF KCSR, FROM ALL CLAIMS FOR DAMAGE TO OR DESTRUCTION OF PROPERTY OR INJURIES OR DEATH TO PERSONS ARISING FROM THE MAINTENANCE, OPERATION, REPAIR, ALTERATION, REPLACEMENT OR REMOVAL OF SAID DRAINAGE IMPROVEMENTS; AND USER HEREBY RELEASES KCSR FROM DAMAGES TO SAID DRAINAGE IMPROVEMENTS FROM ANY CAUSE WHATSOEVER.**
15. **USER HEREBY ASSUMES ALL LIABILITY FOR DEATH OR INJURIES TO ITS EMPLOYEES, OR OTHER PERSONS WORKING ON SAID DRAINAGE IMPROVEMENTS CAUSED BY THE OPERATION OF TRAINS AND WILL HOLD HARMLESS KCSR FROM AND AGAINST ALL DAMAGES AND**

**CLAIMS ARISING OR GROWING OUT OF ANY DEATH OR INJURIES, SO
CAUSED TO SUCH EMPLOYEES OR PERSONS.**

16. Nothing in this Agreement shall be construed to terminate or amend any right to collect funds, or right of defense, indemnification, holding harmless or release, vesting under any existing agreement between the parties hereto and their predecessors-in-interest, governing the drainage improvements referenced herein.
17. This Agreement, along with the servitude grant itself, covers all the agreements and understandings between KCSR and USER with regard to USER's enjoyment of the servitude granted by KCSR to USER concurrently herewith. No representation or statements, verbal or written, have been made modifying, adding to, or changing the terms of this Agreement.

WHEREFORE, the above and foregoing considered, the Parties have hereunto set their hands by their duly-authorized representatives

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY

By _____

(Name printed) _____

(Title) _____

(Date) _____

ST. CHARLES PARISH

By W. St. Pierre

(Name printed) W St. Pierre

(Title) Parish President

(Date) 3/28/12