

Appendix M3

ARZC Lease



AMENDMENT TO LONGITUDINAL LEASE AGREEMENT

THIS AMENDMENT TO THE LONGITUDINAL LEASE AGREEMENT (this "Amendment") is made and entered into as December __, 2011, by and between Arizona & California Railroad Company, a Delaware corporation ("ARZC"), with its principal office located at 5300 Broken Sound Boulevard, Boca Raton, Florida, 33487, and Cadiz Real Estate, L.L.C., a Delaware limited liability company ("Cadiz RE"), with its principal offices located at 550 S. Hope, Suite 2850, Los Angeles, California 90071 (collectively "Parties").

RECITALS

A. ARZC and Cadiz RE entered into the Longitudinal Lease Agreement ("Agreement") dated September 17, 2008, concerning the lease to Cadiz RE of portions of the railroad line operated by ARZC along the center line of an approximately two hundred foot (200') wide right of way between points near Cadiz and Freda, San Bernardino County, California (Mile Posts 144.0 and 189.0, respectively) described more fully in the Agreement and Exhibit "A" thereto.

B. Section 17 of the Agreement provides that: "Cadiz RE agrees to reasonably cooperate with ARZC to provide ARZC with available water from the Facilities to the extent necessary for ARZC's railroad operations over the Property, through a connection to the Facilities that does not materially affect the use of the Facilities, and which is established in a location mutually agreed upon by ARZC and Cadiz RE."

C. In a letter transmitted on September 22, 2011, from RailAmerica, the parent company of ARZC, to Cadiz, Inc., (hereinafter "RailAmerica Letter") it was recognized that: "[t]he Longitudinal Lease Agreement between the ARZC and Cadiz provides for such reasonable uses of facilities and improvements constructed within the leasehold premises in connection with the ARZC operations." Accordingly, ARZC requested that the following anticipated uses by ARZC be incorporated into the design of the Facilities as that term is defined in the Agreement.

"1. Fire hydrants should be placed at locations along the pipeline as appropriate in order to suppress fires that could damage the railroad trestles and facilities.

2. An access road should be built on or within the leased area that will provide access in case of a derailment of one of our trains or for other railroad purposes such as maintenance of way inspections, etc.

3. Access to 10,000 gallons of water on a daily basis for the future needs of the railroad, such as a railcar wash site, vegetation control, offices, or other improvements that are contemplated, but not finalized or planned at this time.

4. Access to power at any meters that are located along the railroad, and emergency access to power at any location, whether it be provided by solar, gas, or otherwise provided.

5. Future operations of a contemplated excursion train along the ARZC rails may require accommodations for passenger terminals and water service for the likely steam powered locomotives.

6. The right to connect and deliver water at any future water production facilities within ARZC right of way to the pipeline and facilities. Any future delivery of water would be subject to permitting and required monitoring of these operations."

(Copies of the RailAmerica Letter and September 22, 2011, transmittal e-mail are attached hereto as Exhibit "A.")

D. On November 4, 2011, the Solicitor of the Department of the Interior issued a Memorandum Opinion (M- 37025) ("Memorandum Opinion") to the Secretary of the Interior regarding the Partial Withdrawal of M-36964. (A copy of the Memorandum Opinion is attached hereto as Exhibit "B.") The Memorandum Opinion opines that within an 1875 Right-of-Way, a railroad's authority to undertake or authorize activities is limited to those activities that derive from or further, in part, a railroad purpose, which allows a railroad to undertake, or authorize others to undertake, activities that have both railroad and commercial purposes.

E. To the extent required by law, ARZC's anticipated uses of the Facilities will be subject to environmental review in accordance with the California Environmental Quality Act (CEQA) and applicable law.

F. The second Recital in the Agreement describes, among other things, the location of the Facilities and provides:

WHEREAS, Cadiz RE desires to lease from ARZC, and ARZC agrees to lease to Cadiz RE, portions of the Property (collectively "Premises") described as: (a) an area of the Property approximately fifteen feet (15') wide and approximately fifteen feet (15') deep, located more than fifty feet (50') northeasterly from the centerline of the existing railroad track to install, construct, operate, maintain, repair, renew and remove one (1) underground water conveyance pipeline approximately seven feet (7') in diameter; (b) as many as four (4) areas of the Property of sufficient size to install, construct, operate, maintain, repair, renew and remove underground manifold pipelines approximately twenty-four inches (24") to thirty-six inches (36") in diameter, that will cross beneath the existing railroad track; (c) an area of the Property located more than seventy-five feet (75') southwesterly from the center line of the existing railroad track of sufficient size to install, construct, operate, maintain, repair, renew and remove electrical power poles designed to support an overhead electrical power line or, alternatively, to install, construct, operate, maintain, repair, renew and remove an underground electrical power line; and (d) areas of the Property of sufficient size to install, construct, operate, maintain, repair, renew and remove appurtenances related to (a), (b) and (c), which together are defined as the "Facilities". The specific

locations of the Premises within the Property shall be determined pursuant to this Agreement

To more accurately reflect the location of the Facilities, this Recital is deleted in its entirety and replaced as follows:

WHEREAS, Cadiz RE desires to lease from ARZC, and ARZC agrees to lease to Cadiz RE, portions of the Property (collectively "Premises") described as: (a) an area of the Property approximately fifteen feet (15') wide and approximately fifteen feet (15') deep, located more than fifty feet (50') southwesterly from the centerline of the existing railroad track to install, construct, operate, maintain, repair, renew and remove one (1) underground water conveyance pipeline approximately seven feet (7') in diameter; (b) as many as four (4) areas of the Property of sufficient size to install, construct, operate, maintain, repair, renew and remove underground manifold pipelines approximately twenty-four inches (24") to thirty-six inches (36") in diameter, that will cross beneath the existing railroad track; (c) an area of the Property located more than seventy-five feet (75') northeasterly from the center line of the existing railroad track of sufficient size to install, construct, operate, maintain, repair, renew and remove electrical power poles designed to support an overhead electrical power line or, alternatively, to install, construct, operate, maintain, repair, renew and remove an underground electrical power line; and (d) areas of the Property of sufficient size to install, construct, operate, maintain, repair, renew and remove appurtenances related to (a), (b) and (c), which together are defined as the "Facilities". These Facilities are necessary works and adjuncts to ARZC's operations as defined in California Public Utility Code section 7551. The specific locations of the Premises within the Property shall be determined pursuant to this Agreement, but shall remain subject to ARZC's review, comment, and approval of design drawings and specifications.

G. Consistent with Sections 17 and 32 of the Agreement, the RailAmerica Letter, and the Memorandum Opinion, the Parties desire to amend the Agreement upon and subject to the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration for the foregoing Recitals, which are incorporated herein by reference, and the mutual promises, covenants and representations hereinafter contained, and subject to the conditions hereinafter set forth, it is further agreed as follows:

1. Section 17 the Agreement is hereby amended by deleting Section 17 in its entirety and replacing it with the following Section 17:

17. Usage of Facilities by ARZC for Railroad Purposes. Cadiz RE agrees to reasonably cooperate with ARZC to provide ARZC with available water and power from and access to the Facilities to the extent necessary for ARZC's railroad operations over the Property, through a connection and/or access to the Facilities that does not materially affect the use of the Facilities, and which is established in a location mutually agreed upon by ARZC and Cadiz RE.

In furtherance of this Section, the following anticipated design improvements shall be incorporated into the Facilities' design:

(a). Facilities Design Improvements.

- i. Fire hydrants will be placed at locations along the Facilities as appropriate in order to suppress fires that could damage the railroad and associated works.
- ii. An access road will be built on or within the Premises that will provide access in case of a derailment of a train or for other railroad purposes, including but not limited to, maintenance and right of way inspections.
- iii. Access to 10,000 gallons of water on a daily basis for the future needs of the ARZC railroad line, such as a railcar wash site, vegetation control, offices, or other improvements that are contemplated, but not finalized or planned at this time.
- iv. Access to power at any meters that are located along the ARZC railroad line, and emergency access to power at any location, whether it be provided by solar, gas, or otherwise provided.
- v. Future operations of a contemplated excursion train along the ARZC railroad line may require accommodations for passenger terminals and water service for the likely steam powered locomotives.
- vi. The right to connect and deliver water at any future water production facilities within ARZC's right of way. Any future delivery of water would be subject to permitting and required monitoring of these operations.

2. Excursion Train. The parties will exercise reasonable efforts to evaluate the legal, engineering and economic feasibility of permitting third-party operation of a steam powered excursion train with passenger terminals that would be located on the Cadiz property, subject to ARZC's operating, liability, and insurance requirements.


3. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

[END – SIGNATURES OF NEXT PAGE]

IN WITNESS WHEREOF, the parties have placed their signatures as of the date set forth above.

"ARZC"

ARIZONA & CALIFORNIA RAILROAD
COMPANY, a Delaware corporation

By: 
Michael Bagley
Its: Assistant Vice-President
Dated: 12/16/2011

"CADIZ RE"

CADIZ REAL ESTATE, LLC, a Delaware limited
liability company

By: 
Timothy J. Shaheen
Its: Chief Executive Officer
Date: 12/20/11