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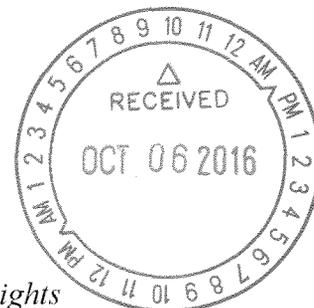
October 6, 2016

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Office of Proceedings  
October 6, 2016  
Part of  
Public Record

Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001



Re: Docket No. FD 36049, *CSX Transportation, Inc. – Trackage Rights Exemption – Central Railroad Company of Indianapolis, Chicago, d/b/a Ft. Wayne and Eastern Railroad Division*

Dear Ms. Brown:

Enclosed are the original and 10 copies of the Notice of Exemption, a diskette containing a WORD and pdf version of the Notice, and a check in the amount of \$1,200 is to cover the filing fee.

Please time and date stamp the extra copy of the filing and return it in the enclosed pre-paid envelope. Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,

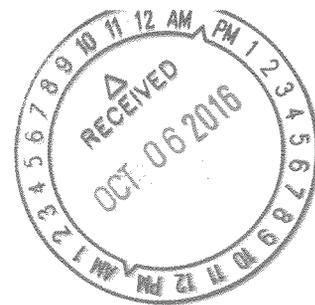
A handwritten signature in black ink, appearing to read "Louis E. Gitomer".

Louis E. Gitomer  
Attorney for CSX Transportation, Inc.

Enclosures

FEE RECEIVED  
October 6, 2016  
SURFACE  
TRANSPORTATION BOARD

FILED  
October 6, 2016  
SURFACE  
TRANSPORTATION BOARD



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36049

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CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—  
CENTRAL RAILROAD COMPANY OF INDIANAPOLIS, D/B/A CHICAGO, FT. WAYNE  
AND EASTERN RAILROAD DIVISION

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VERIFIED NOTICE OF EXEMPTION

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Steven C. Armbrust, Esq.  
CSX Transportation, Inc.  
500 Water Street J-150  
Jacksonville, FL 32202  
(904) 359-1229

Louis E. Gitomer, Esq.  
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600 Baltimore Avenue, Suite 301  
Towson, MD 21204  
(410) 296-2250  
Lou@lgrailaw.com

Dated: October 6, 2016

Attorneys for: CSX Transportation, Inc.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36049

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CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—  
CENTRAL RAILROAD COMPANY OF INDIANAPOLIS, D/B/A CHICAGO, FT. WAYNE  
AND EASTERN RAILROAD DIVISION

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VERIFIED NOTICE OF EXEMPTION

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CSX Transportation, Inc. (“CSXT”) submits this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. §1180.2(d)(7) for limited overhead trackage rights over a 70.4 – mile portion of the rail line that the Central Railroad Company of Indianapolis, d/b/a Chicago, Ft. Wayne and Eastern Railroad Division (“CFE”) leases from CSXT. The limited overhead trackage rights are between Lima, OH, milepost QF 260.3, and Arcola/Columbia City, IN, milepost PC 330.40, the connection to the SDI Facility at Arcola, IN, including all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks (the “Line”).

The parties will enter a written agreement for the limited overhead trackage rights, which are not sought as a responsive application in a rail consolidation proceeding. A copy of the final trackage rights agreement will be filed when executed.

Pursuant to the Surface Transportation Board’s (the “Board”) regulations at 49 C.F.R. § 1180.4(g), CSXT submits the following information:

## **Section 1180.6 Supporting Information**

### **(a)(1)(i) Description of Proposed Transaction**

CSXT leased an approximately 273-mile railroad line to CFE.<sup>1</sup> CSXT acquires finished rail for use throughout its system from the SDI Facility at Arcola, IN. Today, CFE handles the traffic from the SDI Facility to interchange with CSXT at Lima, OH. CSXT has determined that it is more efficient to handle the traffic from the origin at the SDI Facility in single-line service to the locations on the CSXT system where the rail will be used. As part of the *CFE Lease*, CFE agreed to grant CSXT limited overhead trackage rights to directly access the SDI Facility at Arcola, IN. CSXT is now seeking the limited overhead trackage rights agreed to in the *CFE Lease* to reach directly the SDI Facility solely for the purpose of CSXT transporting rail for use on the CSXT system over the 70.4 –mile line from the SDI Facility at Arcola, IN to Lima, OH and empty cars in the opposite direction. The limited overhead trackage rights are between Lima, OH, milepost QF 260.3, and Arcola/Columbia City, IN, milepost PC 330.40, the connection to the SDI Facility at Arcola, IN, including all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks. The commodity to be transported subject to the limited overhead trackage rights will be limited to finished rail.

A colored map showing the Line is attached hereto in Exhibit C.

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<sup>1</sup> *Central Railroad Company of Indianapolis-Lease and Operation Exemption-CSX Transportation, Inc.*, Finance Docket No. 34508 (served July 30, 2004) (the “*CFE Lease*”).

The carriers involved in this transaction and their business addresses are:

CSX Transportation, Inc.  
500 Water Street J-150  
Jacksonville, FL 32202

Central Railroad Company of Indianapolis, d/b/a Chicago, Ft. Wayne and Eastern  
Railroad Division  
2715 Wayne Trace  
Ft. Wayne, IN 46803

Questions and correspondence concerning this notice may be addressed to: Louis E.

Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson,  
MD 21204, (410) 296-2250, Lou@lgraillaw.com.

**(a)(1)(ii) Consummation Date**

The transaction is scheduled to be consummated on or shortly after November 5, 2016.

**(a)(1)(iii) Purpose Sought to be Accomplished**

CSXT proposes to use the Line to transport rail that will be used for maintenance and rehabilitation of the CSXT system from the SDI Facility at Arcola, IN to the location of the track work on CSXT in single line service. CSXT's use of the Line will improve efficiency and reduce costs.

**(a)(5) List of States in which the Party's Property is Situated**

CSXT owns and operates about 21,000 miles of railroad in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, the District of Columbia, and the Provinces of Ontario and Québec.

CFE owns, leases, and operates about 354 miles of railroad in the States of Illinois,

Indiana, and Ohio.

The limited overhead trackage rights are located in the States of Indiana and Ohio.

**(a)(6) Map**

A color map illustrating the involved limited overhead trackage rights is attached as Exhibit C.

**(a)(7)(ii) Agreement**

A copy of the redacted draft Trackage Rights Agreement is attached as Exhibit A.

**Labor Protection**

Any employees of CSXT or CFE who may be adversely affected by the acquisition of the limited overhead trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in *Norfolk and Western Railway Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. —Lease and Operate*, 360 I.C.C. 653 (1980).

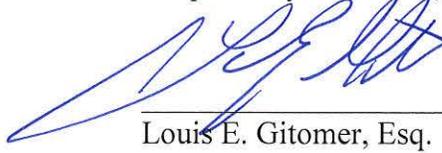
**Interchange Commitment**

CSXT is seeking limited overhead trackage rights over the Line from CFE for the sole purpose of transporting finished rail in single-line service from the SDI Facility at Arcola, IN, to the location of the track work on the CSXT system where the rail will be used to maintain and rehabilitate CSXT. Since the sole purpose for the limited overhead trackage rights is to transport finished rail for CSXT's use, there is no traffic that will be interchanged to third party railroads. The proposed limited overhead trackage rights do not contain an interchange commitment.

**Environmental and Historic Matters**

Environmental and historic impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, environmental and historical reports and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c)(4) and § 1105.8(b)(3).

Respectfully submitted,



Steven C. Armbrust, Esq.  
CSX Transportation, Inc.  
500 Water Street J-150  
Jacksonville, FL 32202  
(904) 359-1229

Louis E. Gitomer, Esq.  
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600 Baltimore Avenue, Suite 301  
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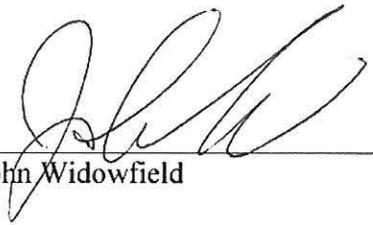
Attorneys for: CSX Transportation, Inc.

Dated: October 6, 2016

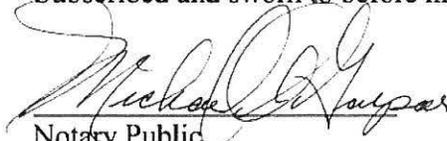
**VERIFICATION**

State of Illinois            )  
                                          )ss  
County of Cook            )

I, John Widowfield, being duly sworn, depose and state that I am Director Joint Facilities of CSX Transportation, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted therein are true and accurate to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
John Widowfield

Subscribed and sworn to before me this 3<sup>RD</sup> day of October 2016.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 10/6/19



CERTIFICATE OF SERVICE

I hereby certify that I have caused the Verified Notice of Exemption in Docket No. FD 36049, *CSX Transportation, Inc.—Trackage Rights Exemption— Central Railroad Company of Indianapolis, d/b/a Chicago, Ft. Wayne and Eastern Railroad Division*, to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governor, Public Service Commission, and Department of Transportation of the States of Indiana and Ohio.



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Louis E. Gitomer  
October 6, 2016

# **EXHIBIT A-AGREEMENT**

**TRACKAGE RIGHTS AGREEMENT**  
**Between**  
**CHICAGO, FORT WAYNE AND EASTERN**  
**and**  
**CSX TRANSPORTATION, INC.**

**THIS AGREEMENT** entered into as of this \_\_\_\_ day of October \_\_ 2016, between Central Railroad of Indianapolis, d/b/a Chicago, Fort Wayne and Eastern, an Indiana corporation, (CFE); and CSX Transportation, Inc., a Virginia corporation, (CSXT).

**WHEREAS**, CFE and CSXT (the Parties) entered into a Land and Track Lease Agreement dated July 26, 2004 (Lease) whereby CFE leases the certain properties from CSXT (the Line):

- From m.p. QF 191.28 (excluding Crestline Yard) at or near Crestline station to m.p. QF 441.71 at or near Tolleston station (Fort Wayne Corridor),
- From m.p. QFD 86.57 to m.p. QFD 70.38 (Decatur Secondary, and
- From m.p. QFS 69.24 to m.p. QFS 62.85 (Spore Industrial Track).

**WHEREAS**, in conjunction with the Land Lease, the Parties entered into a Freight Operating Agreement dated August 1, 2004 (FOA). Under Section 4.6 of the FOA, the Parties agreed to grant CSXT trackage rights over the Line to directly access the SDI facility at Arcola, Indiana, in order for CSXT to procure company materials; and

**WHEREAS**, the Parties desire to enter into a formal Trackage Rights Agreement to allow CSXT's movement to/from the SDI Facility at Arcola, Indiana, solely for the purpose of handling CSXT company materials.

**NOW, THEREFORE**, CFE and CSXT, intending to be legally bound, agree as follow

**ARTICLE 1.           GRANT OF TRACKAGE RIGHTS**

Subject to the terms and conditions herein provided, CFE hereby grants to CSXT the right to operate its trains (locomotives or cars) with its own crews (hereinafter referred to as the Trackage Rights) over the following segments of CFE's railroad:

Over CFE's mainline between Lima, Ohio (mp QF 260.3) and Arcola/Columbia City (mp PC 330.40, the connection to the SDI Facility at Arcola, Indiana (the Subject Trackage ) (a total distance of 70.4 miles). The grant of Trackage Rights to CSXT will be limited to handling of empty and loaded Company Material Unit Steel Trains to/from and across the Subject Track.

CSXT's use of the Subject Trackage shall be in common with CFE and any other user of the Subject Trackage, and CFE's right to use the Subject Trackage shall not be diminished by this Agreement. Pursuant to the Lease, CFE shall not have the right to grant to other persons rights of any nature over the Line.

Except as may otherwise be provided by the Trackage Rights, CSXT shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of CFE, preclude the emergency use by CSXT of such auxiliary tracks as may be designated by CFE for such purposes.

CFE shall have exclusive control of the management and operation of the Subject Trackage. CSXT shall not have any claim against CFE for liability account of loss or damage of any kind in the event the use of the Subject Trackage by CSXT is interrupted or delayed at any time from any cause.

CSXT's entry to and exit from the Subject Trackage shall be governed by the instructions of Norfolk Southern Railway's (NS) dispatcher. CFE shall assist CSXT as may be required from time to time during the term hereof in obtaining the cooperation of NS's dispatcher.

### **ARTICLE 3. RESTRICTION ON USE**

The Trackage Rights herein granted are granted for the sole purpose of CSXT using same for transporting CSXT Company Materials Unit Steel Trains originating at the SDI Facility at Arcola, Indiana. CSXT shall not perform any local freight service whatsoever at any point located on the Subject Trackage.

### **ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS**

- A. When operating over the Subject Trackage, CSXT's locomotives and crews shall be equipped to communicate with CFE and NS on radio frequencies normally used by CFE and NS in directing train movements on the Subject Trackage.
- B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of CFE's representative or his designee.

### **ARTICLE 5. COMPENSATION**

The Initial Rate set in the FOA established ("Initial Rate"). The Initial Rate shall be adjusted annually on the anniversary of the Commencement Date (August 1, 2004) (even if CSXT decides not to exercise its trackage rights as follows. The Initial

Rate shall be revised upward or downward each year to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Initial Rate shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2004 index for the first annual adjustment) as related to the index for the previous calendar year (2003 Index for the first annual adjustment) and applying that percent to the Initial Rate. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided in the FOA.

- A. The Initial Rate as of July 1st, 2016 has been calculated at \_\_\_\_\_ per agreement set out in the FOA. The Parties agree that if CSXT exercises its rights under this Agreement in July 2016, the
  
- B. CSXT shall furnish CFE information concerning all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. The procedure shall be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. The carriers shall determine the minimal data requirements.

**ARTICLE 6. REVISION OF PER CAR MILE CHARGE**

- A. The Per Car Mile Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
  
- B. The Per Car Mile Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of April, 2009 to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Per Car Mile Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2008 Index for the first annual adjustment) as related to the index for the previous calendar year (2007 Index for the first annual adjustment) and applying that percent to the Per

Car Mile Charge.

- C. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2007; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2008; "C" to be the Per Car Mile Charge; and "D" to be the percent of increase or decrease; the revised Per Car Mile Charge stated herein would be revised by the following formula:

$$(1) \frac{B - A}{A} = D$$

$$(2) (D \times C) + C = \text{revised Per Car Mile Charge rounded to the third decimal place, effective April 1 of the year being revised}$$

- D. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.
- E. At the option of either party hereto, the compensation provided for in this Agreement shall be open for renegotiation every five (5) years from the Commencement Date, as hereinafter defined. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach of this Agreement, and the parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled or submitted to binding arbitration.

## **ARTICLE 7. PAYMENT OF BILLS**

- A. All payments called for under this Agreement shall be made by CSXT within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.
- B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the

surcharges, overhead percentages and equipment rentals as specified by CFE at the time any work is performed by CFE for CSXT.

**ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE**

- A. CFE shall maintain, repair and renew the Subject Trackage with its own supervision and labor. CFE shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but CFE does not guarantee the condition of the Subject Trackage or that operations thereover shall not be interrupted. CFE shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, CSXT shall not by reason of failure or neglect on the part of CFE to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CFE or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by CSXT resulting from any such failure or neglect.
- B. CFE shall perform, at the expense of CSXT, such additional maintenance as CSXT may reasonably require or request.
- C. Bills rendered pursuant to the provisions of the Trackage Rights, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by CFE at the time any work is performed by CFE for CSXT.

**ARTICLE 9. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS**

- A. Existing connections or facilities that are jointly used by the parties hereto shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- B. Any additional connections to the Subject Trackage which may be required shall be subject to the CFE's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
  - (i). CSXT or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of CSXT or others which connect the respective lines of the parties hereto.

- (ii). CFE shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of CSXT such portions of the additional tracks located on the right-of-way of CFE which connect the respective lines of the parties hereto. Upon termination of this Agreement, CFE may at its option remove the portion of such trackage and appurtenances as may be located on property of CFE, at the sole cost and expense of CSXT. The salvage material removed shall be released to CSXT or, as otherwise agreed upon, CFE shall credit CSXT the current fair market value for said salvage.

**ARTICLE 10.            ADDITIONS, RETIREMENTS AND ALTERATIONS**

- A. CFE, from time to time and at its sole cost and expense per provisions of the Lease, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage .
- B. If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate CSXT's operations beyond that required by CFE to accommodate its operations, CFE shall construct the additional or altered facilities and CSXT shall pay to CFE the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

**ARTICLE 11.            MANAGEMENT AND OPERATIONS**

- A. CSXT shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains (locomotives and cars) while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage . CSXT shall indemnify, protect, defend, and save harmless CFE and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon CFE or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of CSXT to comply with its obligations in this regard.
- B. CSXT in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of CFE, and the movement of

CSXT's trains (locomotives and cars,) over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CFE. CSXT's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CFE's operating rules and regulations without the prior consent of CFE.

- C. CSXT shall make such arrangements with CFE as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Subject Trackage qualified for operation thereover, and CSXT shall pay to CFE, upon receipt of bills therefore, any cost incurred by CFE in connection with the qualification of such employees of CSXT, as well as the cost of pilots furnished by CFE, until such time as such employees are deemed by the appropriate examining officer of CFE to be properly qualified for operation as herein contemplated.
- D. CFE may conduct an investigation at its option if a CSXT's employee working on CFE's property is alleged to have violated CFE's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, CFE shall schedule the investigation and notify CSXT's local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the CSXT's employee(s) of the investigation. CFE's scheduling of the investigation must comply with the time limits provided in the applicable agreement on CSXT's railroad. CFE shall provide its regulations, supplements, and safety rules to CSXT at no cost.
- E. If CFE conducts an investigation, CFE shall have the right to exclude from the Subject Trackage any employee of CSXT except officers, determined by CFE, as the result of CFE's investigation or hearing described below, to be in violation of CFE's rules, regulations, orders, practices or instructions.
- F. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein CFE desires to bar CSXT's employee from service on CFE's territory pending an investigation by CFE, immediate verbal notification shall be given to the appropriate Transportation Officer of CSXT so that proper written notice can be issued to the employee.
- G. If CFE conducts an investigation, its officer shall conduct the investigation, but an officer of CSXT shall be present to assure compliance with CSXT's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, CFE shall promptly furnish CSXT with two copies of the transcript and a recommendation as to the discipline to be assessed. CSXT's Transportation Officer shall arrange to assess discipline, subject to receipt of

CFE's recommended discipline, within the applicable time limits. If CFE recommends dismissal, CSXT reserves the right to change the recommendation to the extent of barring the individual from operating over CFE's territory.

- H. It is understood that CFE shall reimburse CSXT for all payments that CSXT might be required to make as a result of a challenge being made by the employee or his representative as to the discipline recommended by CFE and assessed by CSXT. CSXT agrees to notify CFE before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, CFE shall be given an opportunity to review CSXT's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which CSXT may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.
- I. The trains, locomotives, cars and equipment of CSXT, CFE, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- J. In the event that a train of CSXT shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among CSXT's crew, or due to mechanical failure of CSXT's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of CSXT fails to maintain the speed required by CFE on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of CSXT's trains on the Subject Trackage, CFE shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew CSXT's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and CSXT shall reimburse CFE for the cost of rendering any such assistance.
- K. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by CSXT under the direction of CFE, and CSXT shall reimburse CFE for the cost thereof.
- L. In the event CFE and CSXT agree that CFE should retain employees or provide additional employees for the sole benefit of CSXT, the parties hereto shall enter into a separate agreement under which CSXT shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by CFE and which would not have been incurred had the retained or additional employees not been provided.

## **ARTICLE 12. MILEAGE AND CAR HIRE**

All mileage and car hire charges accruing on cars in CSXT's trains on the Subject Trackage shall be assumed by CSXT and reported and paid by it directly to the owner of such cars.

## **ARTICLE 13. CLEARING OF WRECKS**

Whenever CSXT's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CSXT shall perform or provide such service under the direction and with the permission of CFE, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting there from, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by CSXT at the time of such wreck, shall be promptly delivered to it.

## **ARTICLE 14. LIABILITY**

The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either party as described herein, all of which are collectively referred to as a "Loss", shall be divided as follows:

- A. If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the parties, then the involved party should be solely responsible for the Loss, even if caused partially or completely by the other party.
- B. If a Loss occurs on the Subject Trackage involving the trains and locomotives of both CFE and CSXT, then: (i) each is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) the parties are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
- C. For purposes of assigning responsibility of a Loss under this Article as between

the parties hereto, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.

- D. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- E. In every case of death or injury suffered by an employee of either CSXT or CFE, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- F. For purposes of determining liability, pilots furnished by CFE to CSXT pursuant to this Agreement shall be considered as the employees of CSXT while such employees are on duty as pilots.
- G. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 9 B (ii), all work performed by CFE shall be deemed performed for the sole benefit of CSXT and, CSXT shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of CFE. CSXT shall protect, indemnify, and save harmless CFE and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which CSXT is responsible.
- H. If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

- I. In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss of or damage to lading.
- J. Notwithstanding any and all of the forgoing provisions of this article, in the event a Loss occurs while the Subject Trackage is being used by CFE and/or CSXT, and such Loss is attributable solely to acts or omissions of any of its employees while under the influence of drugs or alcohol then the party shall be solely responsible for such Loss.

#### **ARTICLE 15. CLAIMS**

- A. Except as provided in Subarticle B below, all claims, injuries, death, and property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense therefore under the provisions of this Agreement.
- B. Each party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.
- C. In the event a claim or suit is asserted against CFE or CSXT which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000).
- F. Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses,

arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

- G. It is understood that nothing in this Article 15 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 14.

#### **ARTICLE 16. INSURANCE**

During the term hereof, CFE shall carry insurance in the amounts and types specified in Section 31 of the Lease.

#### **ARTICLE 17. DEFAULT AND TERMINATION**

In the event of any substantial failure on the part of CSXT to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from CFE, CFE shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by CFE of any prior breach thereof, to terminate the Trackage Rights and CSXT's use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by CFE shall not impair its rights under this Agreement or any cause or causes of action it may have against CSXT for the recovery of damages.

#### **ARTICLE 18. REGULATORY APPROVAL**

- A. Should the Trackage Rights require the prior approval of the Surface Transportation Board (STB), CSXT at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. CFE shall assist and support efforts of CSXT to secure any necessary STB approval of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the exemption of this Agreement from regulation, CSXT, solely, shall be responsible for any and all payments in satisfaction of such conditions.

**ARTICLE 19.            ABANDONMENT OF SUBJECT TRACKAGE**

Notwithstanding the provisions of Article 20, CFE, pursuant to the Lease, may discontinue service over the Subject Trackage during the term of this Agreement or any renewals thereof, upon giving CSXT not less than ninety (90) days' notice of CFE's intent to discontinue service. In the event regulatory authority is required to effect such discontinuance, CSXT shall not interfere with CFE's actions to seek and to exercise such authority as long as CFE's actions are in keeping with the Lease. In the event regulatory authority is required for CSXT to discontinue its own operations over the Subject Trackage, CSXT shall seek and exercise such regulatory authority at the same time that CFE seeks regulatory authority to abandon the Subject Trackage. CFE and CSXT shall exercise the discontinuance and abandonment authority within thirty (30) days from the date CFE and CSXT obtain the aforementioned regulatory authority. Upon the date established by CFE for discontinuance of the Subject Trackage by its aforesaid notice to CSXT or upon the above specified date of exercise of the regulatory authority to discontinue operations, whichever is later, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. The foregoing provisions shall govern the parties hereto notwithstanding the provisions of 49 U.S.C. Section 10904 or any other provisions of law. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 18 result in an obligation imposed by any competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

**ARTICLE 20.            TERM**

- A. This Agreement shall be effective the day and year first above written and shall remain in effect concurrent with the terms of the Lease and shall terminate either concurrent with the termination of the Lease.
- B. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

**ARTICLE 21.            FORCE MAJEURE**

CFE shall not be responsible to CSXT for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its

control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, actual or threatened acts of terrorism, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

**ARTICLE 22.           ARBITRATION**

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

**ARTICLE 23.           SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns, by merger or otherwise, of the parties hereto. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

**ARTICLE 24.           NOTICE**

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to CSXT:           Joint Facility Contracts  
                          CSX Transportation, Inc.  
                          500 Water St., J315  
                          Jacksonville, FL 32202

If to CFE:            General Manager  
                          Chicago, Fort Wayne and Eastern  
                          2715 Wayne Trace  
                          Ft. Wayne IN 46803

Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

**ARTICLE 25.           GENERAL PROVISIONS**

- A.     This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.
- B.     This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- C.     No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- D.     All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- E.     All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F.     As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- G.     This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- H.     Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

CSX TRANSPORTATION, INC.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title:

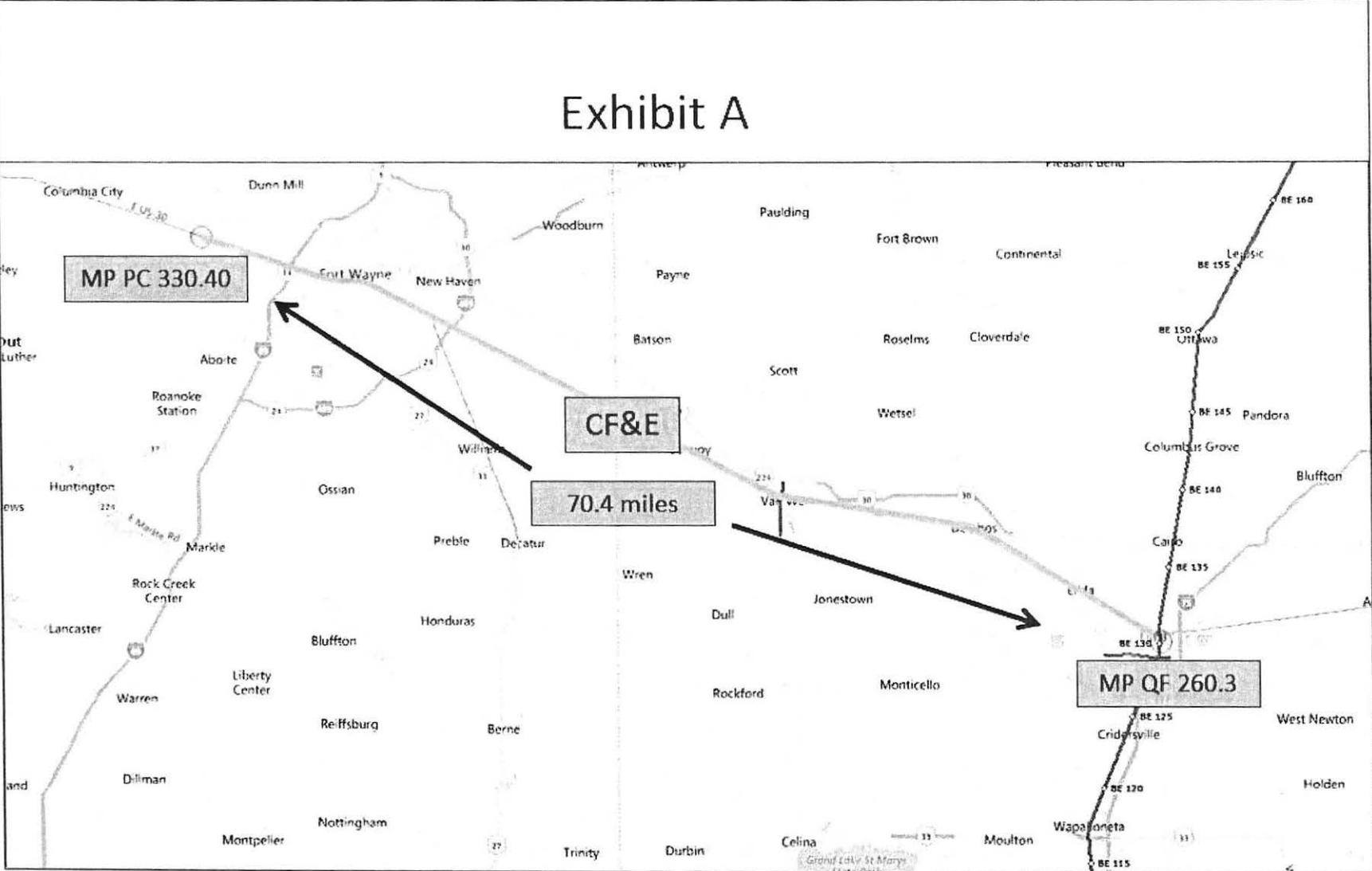
CHICAGO, FORT WAYNE AND  
EASTERN

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title:

DRAFT

# Exhibit A



# **EXHIBIT B-FEDERAL REGISTER NOTICE**

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36049

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—  
CENTRAL RAILROAD COMPANY OF INDIANAPOLIS, D/B/A CHICAGO, FT. WAYNE  
AND EASTERN RAILROAD DIVISION

The Central Railroad Company of Indianapolis, Chicago, d/b/a Ft. Wayne and Eastern Railroad Division has agreed to grant limited overhead trackage rights to CSX Transportation, Inc. (“CSXT”). The limited overhead trackage rights are over the 70.4 –mile between Lima, OH, milepost QF 260.3, and Arcola/Columbia, IN, milepost PC 330.40, the connection to the SDI Facility at Arcola, IN, including all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks. The limited overhead trackage rights will be effective on or after November 5, 2016.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Docket No. FD 36049, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-

0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, Lou@lgrailaw.com.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

# EXHIBIT C-MAP

# Exhibit C

