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MAY 16 2011

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**SURFACE
TRANSPORTATION BOARD**

Robert A. Wimbish

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Office of Proceedings

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MAY 16 2011

May 16, 2011

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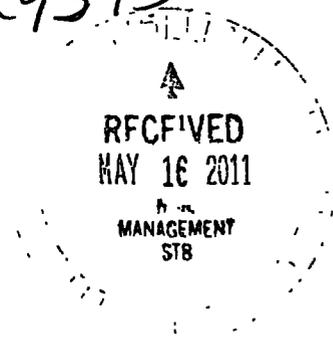
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BY HAND DELIVERY

Cynthia T. Brown
Chief, Section of Administration – Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

FEE RECEIVED

MAY 16 2011
SURFACE
TRANSPORTATION BOARD



Re: STB Docket No. FD 35516
*CSX Transportation, Inc. – Trackage Rights Exemption – Norfolk Southern
Railway Company*

Trackage Rights Notice of Exemption and Motion for Protective Order

**Contains documents filed under seal pursuant to a request for a protective
order, 49 C.F.R. § 1104.14**

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and 11 copies of the verified notice of exemption pursuant to which CSX Transportation, Inc. may acquire trackage rights over certain lines owned by Norfolk Southern Railway Company (“NSR”). The notice of exemption is filed pursuant to 49 C.F.R. § 1180.2(d)(7). A disk containing both a Microsoft Word compatible and a “.pdf” version of the notice of exemption, and a check in the amount of \$1,200 covering the trackage rights notice filing fee are also enclosed.

In addition, NSR has enclosed for filing in this proceeding a motion for a protective order to preserve the confidentiality of an unredacted draft trackage rights agreement offered herewith under seal on the premise that certain terms contained in the unredacted draft agreement are highly sensitive and therefore should not be publicly disseminated. (NSR has also included with its notice of exemption a redacted, “public” version of the same draft trackage rights agreement with the commercially sensitive terms omitted.)

Cynthia T. Brown
May 16, 2011

Please acknowledge receipt of this filing by date-stamping the enclosed acknowledgment copy and returning it to our courier.

Very truly yours,

A handwritten signature in black ink that reads "R. A. Wimbish". The signature is written in a cursive style with a large, sweeping initial "R".

Robert A. Wimbish

Enclosures

cc: David L. Coleman
Louis E. Gitomer (CSXT)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 35516

**CSX TRANSPORTATION, INC.
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**



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TRANSPORTATION BOARD**

**David L. Coleman
General Attorney
NORFOLK SOUTHERN CORPORATION
Three Commercial Place
Norfolk, VA 23510
(757) 629-2806
(757) 629-2607 (Fax)**

**Robert A. Wimbish
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May 16, 2011

**Attorneys for Norfolk Southern
Railway Company**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 35516

**CSX TRANSPORTATION, INC.
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Norfolk Southern Railway Company (“NSR”) hereby submits this verified notice of exemption, pursuant to 49 C.F.R. §1180.2(d)(7) to permit it to convey to CSX Transportation, Inc. (“CSXT”) nonexclusive local trackage rights over approximately 11.6 miles of NSR-owned rail line extending between milepost WG 12.0 near Helen, WV, and milepost WG 23.6 at Pemberton, WV (hereinafter, the “Line”). The trackage rights will be based upon a written agreement and are not sought in connection with a responsive application to a rail consolidation proceeding. Accordingly, the subject trackage rights transaction is categorically exempt from the formal prior approval requirements of 49 U.S.C. § 11323.

On behalf of the parties hereto, NSR hereby files this notice of exemption for the proposed transaction, and submits the following information in support thereof in accordance with the requirements of 49 C.F.R. § 1180.4(g)(i):

49 C.F.R. § 1180.6(a)(1)(i)
Description of the proposed transaction

CSXT currently leases from NSR a 13.5-mile rail line extending between milepost WG 12.0 near Helen, WV, and milepost WG 25.5 at McVey, WV (the “Helen-McVey Line”),¹ pursuant to – (1) a lease agreement executed by and between CSXT and NSR’s corporate predecessor Norfolk and Western Railway Company (“N&W”) in 1995, subsequently supplemented in 1996;² and (2) an individual exemption granted by the Board’s predecessor, the Interstate Commerce Commission, in 1995. See CSX Transportation, Inc. – Lease and Operation Exemption – Norfolk and Western Railway Company, Finance Docket No. 32768 (ICC served Oct. 27, 1995).³

The Lease provides that NSR may, upon 30 days written notice, terminate the lease at its sole discretion, provided that NSR offers to CSXT trackage rights or another appropriate agreement extending to CSXT continuing rights to operate between mileposts WG 12.0 near Helen and WG 23.6 at Pemberton (i.e., the Line), for CSXT’s own purposes with its own trains and crews. NSR recently has elected to invoke its termination rights under the Lease and has tendered appropriate notice of the same to CSXT. In so doing, NSR has offered CSXT a draft trackage rights agreement (attached hereto as Exhibit B) that would govern CSXT’s continued provision of common carrier service over the Line upon Lease termination.

¹ The Line that is the subject of this trackage rights notice of exemption represents most of, but not all, of the Helen-McVey Line, as is shown on the map attached hereto as Exhibit A.

² The 1995 lease and the 1996 supplement thereto will be referred to herein collectively as the “Lease.”

³ The lease covers all of the trackage that is encompassed by the subject trackage rights notice. Under the terms of the Lease, NSR specifically permitted CSXT access to the Helen-McVey Line via CSXT’s connection to it at milepost 23.6 at Pemberton.

Pursuant to the Lease terms and the termination notice that NSR has tendered to CSXT, CSXT's leasehold interest in the Helen-McVey Line will terminate on June 16, 2011, and NSR will assume control of, and resume operations over, the Helen-McVey Line effective as of that date. CSXT's leasehold interest in the Line will, as of that date, convert to a local trackage rights tenancy over a line owned and operated by NSR.⁴ The purpose of this transaction is to permit NSR to assume direct control of the Helen-McVey Line, and to resume direct service to shippers located on it, while at the same time, consistent with the specific terms of the Lease, extending to CSXT the right to continue to provide common carrier service over the Line.

The person to whom correspondence with respect to this notice should be addressed (49 C.F.R. § 1180.6(a)) is:

Robert A. Wimbish
Baker & Miller PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7824
Fax: (202) 663-7849

The parties to this transaction are as follows:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

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

⁴ NSR understands that the subject trackage rights notice will convert CSXT's leasehold interest in the Line to a local trackage rights tenancy, thereby enabling CSXT to continue to provide common carrier service over the Line. This transaction does not, however, provide for CSXT's continued use of the segment of rail line between mileposts WG 23.6 at Pemberton WG 25.5 at McVey, which is included in the Lease but not in the proposed trackage rights transaction, and NSR anticipates that CSXT will proceed under a separate docket to obtain authority to terminate its common carrier status between Pemberton and McVey in keeping with its obligation to do so under the Lease.

49 C.F.R. § 1180.6(a)(1)(ii)
Proposed Time Schedule for Consummation

CSXT trackage rights operations over the Line are expected to commence as of June 16, 2011, the day after that effective date of the notice.

49 C.F.R. § 1180.6(a)(1)(iii)
Purpose Sought To Be Accomplished

As indicated above, CSXT currently leases and operates the Helen-McVey Line from NSR. The Lease affords CSXT exclusive possession of the Helen-McVey Line, but the Lease is terminable at NSR's discretion upon 30 day's notice, provided that NSR offers CSXT local trackage rights over the Line (i.e., from Helen to Pemberton). NSR has elected to re-assume possession of the Helen-McVey Line to permit NSR to resume service to shippers located along that rail line and to undertake certain track improvements necessary to facilitate NSR's restoration of service. For this reason, NSR has tendered CSXT with notice of termination as provided under the Lease, and has also offered CSXT local trackage rights over the Line pursuant to the attached (unexecuted) trackage rights agreement. Accordingly, the transaction covered by this notice is intended – (1) to permit NSR to exercise its contractual right to terminate the Lease; (2) to enable NSR to re-assume direct control of the Line; and (3) to afford CSXT the right to continue common carrier operations over the Line via local trackage rights in lieu of CSXT's current leasehold interest. By terminating the lease and converting CSXT's operations to those of a local trackage rights tenant, NSR will be able to resume service to shippers located along the Line, and to make adjustments to the rail physical plant along the Line so that NSR may meet the future service needs of shippers.

49 C.F.R. § 1180.6(a)(5)
States in Which Parties' Property is Located

NSR owns/operates rail property located in the States of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.

CSXT owns/operates rail property located in States of Alabama, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, the District of Columbia, Delaware, and the Canadian Provinces of Ontario and Quebec.

49 C.F.R. § 1180.6(a)(6)
Map - Exhibit A

A map of the Line over which NSR proposes to convey trackage rights to CSXT is attached hereto as Exhibit A.

49 C.F.R. § 1180.6(a)(7)(ii)
Agreement – Exhibit B

A copy of the draft (unexecuted) trackage rights agreement intended to govern CSXT's local trackage rights operations is attached hereto as Exhibit B. The agreement contains sensitive economic terms, and, accordingly, is being offered under seal pursuant to a concurrently-filed motion for a protective order. A redacted, "public" copy of the trackage rights agreement is also included herewith. NSR believes that the draft trackage rights agreement, or one substantially similar to it, will soon be executed by both parties. As soon as the agreement has been fully executed, NSR will forward copies of that agreement to the Board in keeping with the requirements of section 1180.6(a)(7)(ii).

49 C.F.R. § 1180.4(g)(i)
Labor Protection

NSR anticipates that any employees adversely affected by this transaction will be afforded the level of protection set forth in Norfolk and Western Ry. Co. – Trackage Rights – BN, 354 I.C.C 605 (1978), as modified in Mendocino Coast Ry., Inc. – Lease and Operate, 360 I.C.C 653 (1980).

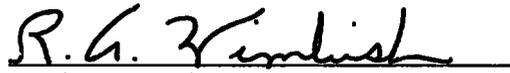
49 C.F.R. § 1180.4(g)(2)(i)
Caption Summary

A caption summary suitable for publication in the Federal Register is attached to this notice of Exemption as Exhibit C.

49 C.F.R. § 1180.4(g)(3)
Environmental and historic reporting requirements

The proposed transaction will not result in operating changes that would necessitate the preparation and filing of environmental documentation under 49 C.F.R. §§ 1105.6(c)(4) and 1105.7(e)(4) or (5). In addition, because the subject transaction will not substantially change the level of maintenance on the Line (or, for that matter, the Helen-McVey Line), a historic report is not required. 49 C.F.R. § 1105.8(b)(3).

Respectfully submitted,



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David L. Coleman
General Attorney
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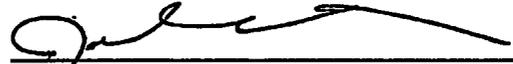
Attorneys for Norfolk Southern
Railway Company

May 16, 2011

VERIFICATION

I, John T. Moon, Manager – Strategic Planning for Norfolk Southern Railway Company (“NSR”), hereby verify under penalty of perjury that to the best of my knowledge the foregoing trackage rights notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of NSR in connection with the subject trackage rights transaction.

Executed this 16th day of May, 2011.



John T. Moon
Manager – Strategic Planning

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 35516

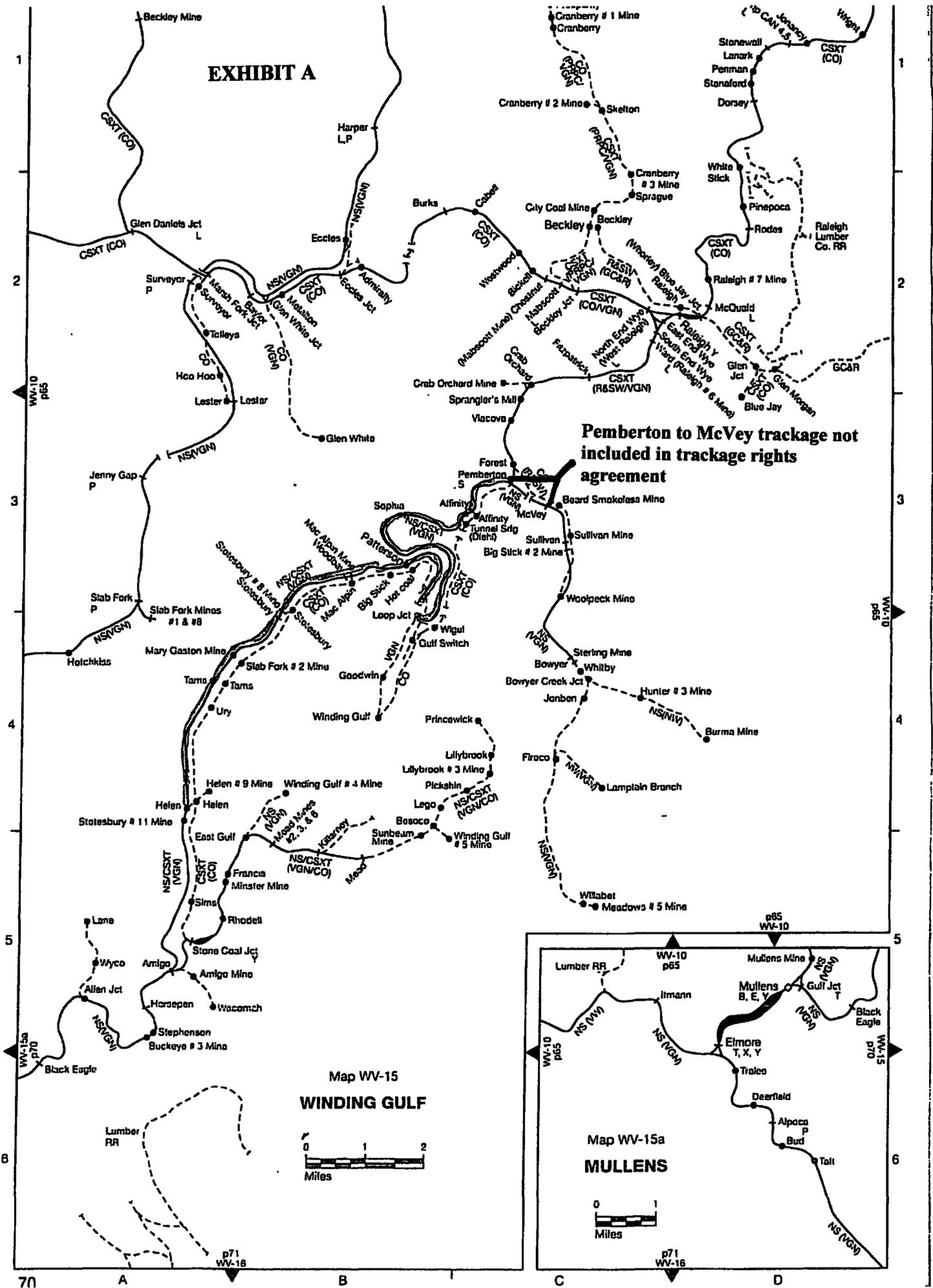
**CSX TRANSPORTATION, INC.
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

EXHIBIT A

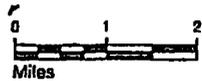
MAP

EXHIBIT A



Pemberton to McVey trackage not included in trackage rights agreement

Map WV-15
WINDING GULF



Map WV-15a
MULLENS



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 35516

**CSX TRANSPORTATION, INC.
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

EXHIBIT B

DRAFT REDACTED TRACKAGE RIGHTS AGREEMENT (PUBLIC)

**[UNREDACTED HIGHLY CONFIDENTIAL VERSION
SUBMITTED SEPARATELY – UNDER SEAL]**

D R A F T

TRACKAGE RIGHTS AGREEMENT
Between
NORFOLK SOUTHERN RAILWAY COMPANY
And
CSX TRANSPORTATION, INC.

This **AGREEMENT**, entered into as of this ____ day of _____, 2011, by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (herein referred to as "Owner" or "NSR") and **CSX TRANSPORTATION, INC.**, a Virginia corporation, (herein referred to as "User" or CSXT) ;

WITNESSETH:

WHEREAS, pursuant to the provisions of that certain written Lease Agreement between Norfolk and Western Railway company ("NW") and CSX Transportation, Inc., ("CSXT") dated January 26, 1995, (hereinafter referred to as "Lease Agreement") CSXT leased that certain line of NW's railroad from Point "A" at MP WG12.0 near Helen, West Virginia, to Point "B" at MP WG25.5 at McVey, West Virginia, including access to the CSXT connection at MP WG23.6 at Pemberton, West Virginia, a distance of approximately 13.5 miles; and

WHEREAS, the Lease Agreement was Supplemented June 19, 1996 extending the terms for an additional 10 years; and

WHEREAS, NSR provided CSXT a termination letter dated May 16, 2011, officially notifying CSXT that NSR would exercise its right as specified in Section 12 of the 1996 Lease Agreement to terminate said agreement effective June 16, 2011; and

WHEREAS, a condition for terminating the Lease Agreement, NSR must offer CSXT trackage rights over the former leased track; and

NOW, THEREFORE, NSR and CSXT hereto, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, Owner hereby grants to User 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 Owner's railroad from Point "A" at MP WG12.0 near Helen, West Virginia, to Point "B" at MP WG23.6 at

Pemberton, West Virginia, a distance of approximately 11.6 miles, as indicated on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Joint Trackage"):

ARTICLE 2. USE OF JOINT TRACKAGE

- A. User's use of the Joint Trackage shall be in common with Owner and any other user of the Joint Trackage, and Owner's right to use the Joint Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Joint Trackage.
- B. Except as may otherwise be provided by this Agreement, User shall not use any part of the Joint 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 Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purposes.
- C. Owner shall have exclusive control of the management and operation of the Joint Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Joint Trackage by User is interrupted or delayed at any time from any cause.

ARTICLE 3. MISCELLANEOUS SPECIAL PROVISIONS

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

ARTICLE 4. COMPENSATION

- A. CSXT shall pay NSR a sum of \$[] per car mile for each empty and loaded railcar moved over the Joint Trackage hereinafter called "Current Charge".
- B. CSXT will furnish to NSR, in care of Manager Miscellaneous Billing - Roanoke, VA or their designates, at the end of each month, a statement of the number of trains operated over the Joint Trackage during the month. Based on this

statement, NSR will render to CSXT a bill, computed in accordance with the provisions of this Section 4, for CSXT's use of the Joint Trackage.

ARTICLE 5. REVISION OF CURRENT CHARGE

- A. The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- B. The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of July 2012 to compensate for [

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- D. [REDACTED]

- E. At the option of either party hereto, the compensation provided for in this Agreement shall be open for renegotiation every [REDACTED] 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 6. PAYMENT OF BILLS

- A. All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. 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 shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

ARTICLE 7. MAINTENANCE OF JOINT TRACKAGE

- A. Owner shall maintain, repair and renew the Joint Trackage with its own supervision and labor. Owner shall keep and maintain the Joint Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Joint Trackage or that operations thereover shall not be interrupted. Owner 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 13, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Joint Trackage, have or make any claim or demand against Owner 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 User resulting from any such failure or neglect.
- B. Owner shall perform, at the expense of User, such additional maintenance as User

may reasonably require or request.

ARTICLE 8. 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 Joint Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
 - (i). User 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 User or others which connect the respective lines of the parties hereto.
 - (ii). Owner shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of User such portions of the additional tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto. Upon termination of this Agreement, Owner may at its option remove the portion of such trackage and appurtenances as may be located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner shall credit User the current fair market value for said salvage.

ARTICLE 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

- A. Owner, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Joint 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 Joint Trackage and such retirements shall be excluded from the Joint Trackage.
- B. If the parties agree that changes in or additions and betterments to the Joint Trackage, including changes in communication or signal facilities, are required to

accommodate User's operations beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 10. MANAGEMENT AND OPERATIONS

- A. User 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 Joint Trackage. User shall indemnify, protect, defend, and save harmless Owner 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 Owner 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 User to comply with its obligations in this regard.

- B. User in its use of the Joint Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains (locomotives and cars,) over the Joint Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Joint 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 Owner's operating rules and regulations without the prior consent of Owner.

- C. User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Joint Trackage qualified for operation thereover, and User shall pay to Owner, upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

- D. Owner may conduct an investigation at its option if a User's employee working on Owner's property is alleged to have violated Owner's safety rules, operating rules,

PUBLIC (REDACTED) VERSION
Exhibit B

regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, Owner shall schedule the investigation and notify User's local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Owner's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner shall provide its regulations, supplements, and safety rules to User at no cost.

- E. If Owner conducts an investigation, Owner shall have the right to exclude from the Joint Trackage any employee of User except officers, determined by Owner, as the result of Owner's investigation or hearing described below, to be in violation of Owner'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 Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification shall be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.
- G. If Owner conducts an investigation, its officer shall conduct the investigation, but an officer of User shall be present to assure compliance with User's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, Owner shall promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer shall arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory.
- H. It is understood that Owner shall reimburse User for all payments that User 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 Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner shall be given an opportunity to review User'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 User 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 User, Owner, and any other present or future user of the Joint 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 User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's crew, or due to mechanical failure of User'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 User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User'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 Joint Trackage, and User shall reimburse Owner 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 Joint Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.
- L. In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User 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 Owner and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 11. MILEAGE AND CAR HIRE

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

ARTICLE 12. CLEARING OF WRECKS

Whenever User's use of the Joint Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform or provide such service, 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 therefrom, 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 User at the time of such wreck, shall be promptly delivered to it.

ARTICLE 13. 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, judgements, litigation expenses and attorney's fees resulting from the use of the Joint 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 Joint Trackage involving the trains and locomotives of both Owner and User, 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 Joint 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 User or Owner, 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

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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 Owner to User pursuant to this Agreement shall be considered as the employees of User 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 8 B (ii), all work performed by Owner shall be deemed performed for the sole benefit of User and, User 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 Owner. User shall protect, indemnify, and save harmless Owner 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 User 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 or damage to lading.
- J. Notwithstanding any and all of the forgoing provisions of this article, in the event a Loss occurs while the Joint Trackage is being used by Owner and/or User, and such Loss is attributable solely to the willful or wanton negligence of only one of the parties to this Agreement, then the party hereto which was so willfully or wantonly negligent shall be solely responsible for such Loss.

ARTICLE 14. CLAIMS

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- A. Except as provided in Subarticle B below, all claims, injuries, death, 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 therefor 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 Owner or User 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 [REDACTED]
- 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 14 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 13.

ARTICLE 15. DEFAULT AND TERMINATION

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

ARTICLE 16. REGULATORY APPROVAL

- A. Should this Agreement require the prior approval of the Surface Transportation Board (STB), User at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. Owner shall assist and support efforts of User 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, User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 17. ABANDONMENT OF JOINT TRackage

- A. Notwithstanding the provisions of Article 18, Owner shall have the right, subject to securing any necessary regulatory approval, to abandon the Joint Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, Owner shall give User ninety (90) days' advance notice in writing of its intention to do so in order that User may determine whether it desires to purchase the Joint Trackage (or portion thereof) or to discontinue its use thereof.
- B. If User desires to purchase the Joint Trackage (or such portion thereof as Owner has notified User will be abandoned), it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event the offer meets the requirements of the aforesaid section and Owner receives more than one such offer, Owner shall exercise its statutory right to negotiate with User rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to User's acquisition of the Joint Trackage or portion thereof shall be governed by applicable provisions of the law.
- C. In any one of the circumstances listed below User shall be deemed to have

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determined that it does not desire to purchase the Joint Trackage or portion thereof and that it desires to discontinue its use thereof:

- (i). User fails to submit an offer of financial assistance to purchase the Joint Trackage or portion thereof within the time prescribed by statute and applicable regulations, or
- (ii). User, having made an offer of financial assistance to purchase the Joint Trackage or portion thereof, but being unable to reach agreement with Owner as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
- (iii). User, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
- (iv). User, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In such event User shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Joint Trackage or portion thereof. If User does not promptly file an application seeking approval of the discontinuance of User's operations over the Joint Trackage or portion thereof, Owner shall be deemed to have been given User's power of attorney to take such action on User's behalf.

- D. In the event any application filed by Owner is granted but an application filed by User under Subsection C above is denied by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Joint Trackage or portion thereof to User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.
- E. In the event Owner abandons any portion (or all) of the Joint Trackage or portion thereof under circumstances which (because of changes in the law or otherwise) are not subject to handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that User either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.
- F. In the event Owner's application for authority to abandon is denied, User shall withdraw any application it has filed under Subsection C above.

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- G. 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 18. TERM

- A. This Agreement shall be effective the day and year first above written and shall remain in effect for [REDACTED] years, and shall continue in effect thereafter until terminated by User upon sixty (60) days advance written notice to Owner of its intent to terminate this Agreement or until User receives authority to discontinue the rights herein granted, whichever occurs first.
- 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 19. FORCE MAJEURE

Owner shall not be responsible to User 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, 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 20. ARBITRATION

Any dispute arising between the parties with respect to this Agreement that is not resolved within 90 days of the date of the written notice of the dispute may be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association by either party. 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 21. 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 22. 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 Owner: VP Transportation - Operations
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2191

If to User: Director Passenger and Joint Facility Agreements
CSX Transportation, Inc.
500 Water Street, J315
Jacksonville, FL 32202

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

ARTICLE 23. 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.

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- 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.

Witness for Railroad:

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____

Print/Type Name: _____

Print/Type Title: _____

CSX TRANSPORTATION, INC.

Witness for Railroad:

By: _____

Print/Type Name: _____

Print/Type Title: _____

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 35516

**CSX TRANSPORTATION, INC.
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

EXHIBIT C

CAPTION SUMMARY

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35516

**CSX TRANSPORTATION, INC.
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

Norfolk Southern Railway Company (“NSR”) has agreed to grant local trackage rights to CSX Transportation, Inc. (“CSXT”) over approximately 11.6 miles of NSR-owned rail line extending between milepost WG 12.0 near Helen, WV, and milepost WG 23.6 at Pemberton, WV (hereinafter, the “Line”). As a result of this transaction – (1) CSXT’s current leasehold operation of the Line will terminate and be converted to a local trackage rights tenancy, and (2) NSR will re-assume possession of the Line, and will resume service to shippers on it. The subject trackage rights are expected to become effective as of June 16, 2011.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). 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 stay the transaction.

An original and 10 copies of all pleadings, referring to STB Docket No. FD 35516 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 Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037; rwimbish@bakerandmilller.com.

Dated:

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