

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35548

CANADIAN PACIFIC RAILWAY COMPANY
— TRACKAGE RIGHTS EXEMPTION —
CSX TRANSPORTATION, INC.

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**SURFACE
TRANSPORTATION BOARD**

VERIFIED NOTICE OF EXEMPTION

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**SURFACE
TRANSPORTATION BOARD**

W. Karl Hansen
Leonard, Street and Deinard
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Tel: (612) 335-7088

ATTORNEYS FOR
CANADIAN PACIFIC RAILWAY COMPANY

Date: August 31, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35548

CANADIAN PACIFIC RAILWAY COMPANY
— TRACKAGE RIGHTS EXEMPTION —
CSX TRANSPORTATION, INC.

VERIFIED NOTICE OF EXEMPTION

Canadian Pacific Railway Company dba Canadian Pacific ("CP") files this Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7) for overhead trackage rights over the rail line of CSXT Transportation, Inc. ("CSXT") between Milepost CH 5.0± in the vicinity of Fort Street, at a connection between CSXT and Consolidated Rail Corporation's ("CRC") Foreman Wye, and Milepost CH 7.5±, at or near Michigan Avenue on CSXT's Detroit Subdivision, a total distance of approximately 2.5 miles in Wayne County, MI (the "Line"). The parties have entered into a written agreement, which is not sought in a responsive application in a rail consolidation proceeding.

To improve operational efficiency, CP and CSXT wish to cancel a switching support agreement under which CSXT handles CP's Port of Vancouver intermodal freight ("POV Freight") moving via Norfolk Southern Railway Company's ("NS") Oakwood Yard to CP's Intermodal Facility at Oak Yard in Detroit, Michigan. In order to handle the POV Freight from Oakwood Yard to its Intermodal Facility in its own trains, CP needs to acquire trackage rights over the Line to connect with its previously granted

trackage rights over CSXT's Detroit Subdivision between Milepost CH 7.5± and Milepost CH 13.5±, at Oak Yard.¹

Pursuant to the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. § 1180.4(g), CP submits the following information.

Section 1180.6(a)(1)(i) Summary of the Proposed Transaction

CP proposes to acquire limited overhead trackage rights over the rail line of CSXT between Milepost CH 5.0± in the vicinity of Fort Street, at a connection between CSXT and CRC's Foreman Wye and Milepost CH 7.5±, at or near and Michigan Avenue on CSXT's Detroit Subdivision, a total distance of approximately 2.5 miles in Wayne County, MI (the "Line").² Applicant Canadian Pacific Railway Company's business address is Gulf Canada Square, Suite 500, 401 – 9th Avenue SW, Calgary, Alberta, T2P 4Z4, Canada; telephone number (403) 319-7000. Questions regarding this transaction can be addressed to the counsel identified on the cover page of the notice.

Section 1180.6(a)(1)(ii) Consummation Date

The transaction will be consummated on or immediately after the effective date of this Notice of Exemption.

Section 1180.6(a)(1)(iii) Purpose of the Transaction

The purpose of the transaction is to increase the operating efficiency of CP and CSXT in Detroit, Michigan and to allow for a more efficient routing of CP's trains into the Intermodal Facility. CP will handle its POV Freight between Oakwood Yard and the

¹ The Board authorized these trackage rights in *Canadian Pacific Railway Company - Trackage Rights Exemption - CSX Transportation, Inc.*, STB Finance Docket No. 34033, STB served May 31, 2001.

² In a related concurrent filing, STB Finance Docket No. 35549, CP seeks authority to acquire trackage rights over approximately 1,980 feet of CRC's Foreman Wye in order to connect the trackage rights in this proceeding with CP's existing trackage rights over NS's Detroit District Subdivision.

Intermodal Facility in its own trains over the trackage rights on the Line and CSXT will be relieved of its obligations under the switching support agreement.

Section 1180.6(a)(5) States in which property of the Applicant is situated.

CP's wholly owned U.S. subsidiaries, Soo Line Railroad Company, Delaware & Hudson Railway, Inc., and Dakota, Minnesota & Eastern Railroad Corporation operate or own properties in Illinois, Iowa, Missouri, Kansas, Nebraska, Wisconsin, Minnesota, North Dakota, South Dakota, Indiana, Michigan, Ohio (property ownership only), Kentucky, Montana, Wyoming, New York, Pennsylvania and New Jersey (trackage rights only).

Section 1180.6(a)(6) Map

A map is provided as Exhibit 1.

Section 1180.6(a)(7)(ii) Agreements

The trackage rights agreement, entitled Supplemental Agreement, is attached as Exhibit 2. The Supplemental Agreement incorporates by reference the terms of the May 10, 2001 trackage rights agreement, a copy of the public version of which is included in Exhibit 2.

Section 1180.4(g)(1)(i) Labor Protection

Although CP does not anticipate that any employees will be adversely affected by this transaction, it recognizes that employees adversely affected by the trackage rights component of this transaction are entitled to protection under the conditions imposed in *Norfolk and W. Ry. Co. -- Trackage Rights – Burlington N., Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. -- Lease and Operate – Cal. W. R.R.*, 360 I.C.C. 653 (1980).

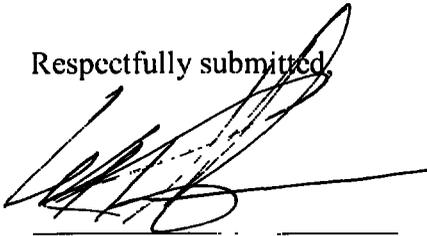
Section 1180.4(g)(2)(i) Caption Summary

A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

Section 1180.4(g)(3) Environmental and Historical Documentation

Environmental and historical documentation are not required for this transaction. As provided in 49 C.F.R. § 1105.6(c)(4) and 49 C.F.R. § 1105.8(b)(3), trackage rights do not require preparation of environmental and historical reports and documentation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Karl Hansen', written over a horizontal line.

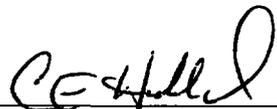
W. Karl Hansen
Leonard, Street and Deinard
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Tel: (612) 335-7088
Attorneys for Canadian Pacific Railway Company

VERIFICATION

STATE OF MINNESOTA

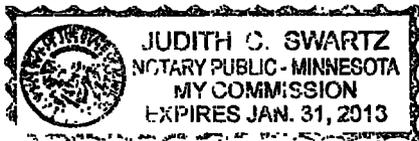
COUNTY OF HENNEPIN

C. E. Hubbard, being duly sworn, deposes and says that he has read the foregoing Notice of Exemption and that the contents thereof are true and correct to the best of his knowledge and belief.



C. E. Hubbard

Subscribed and sworn to before me this 25 day of August, 2011.





Notary Public

My Commission expires:

EXHIBIT 1

Map

EXHIBIT 1

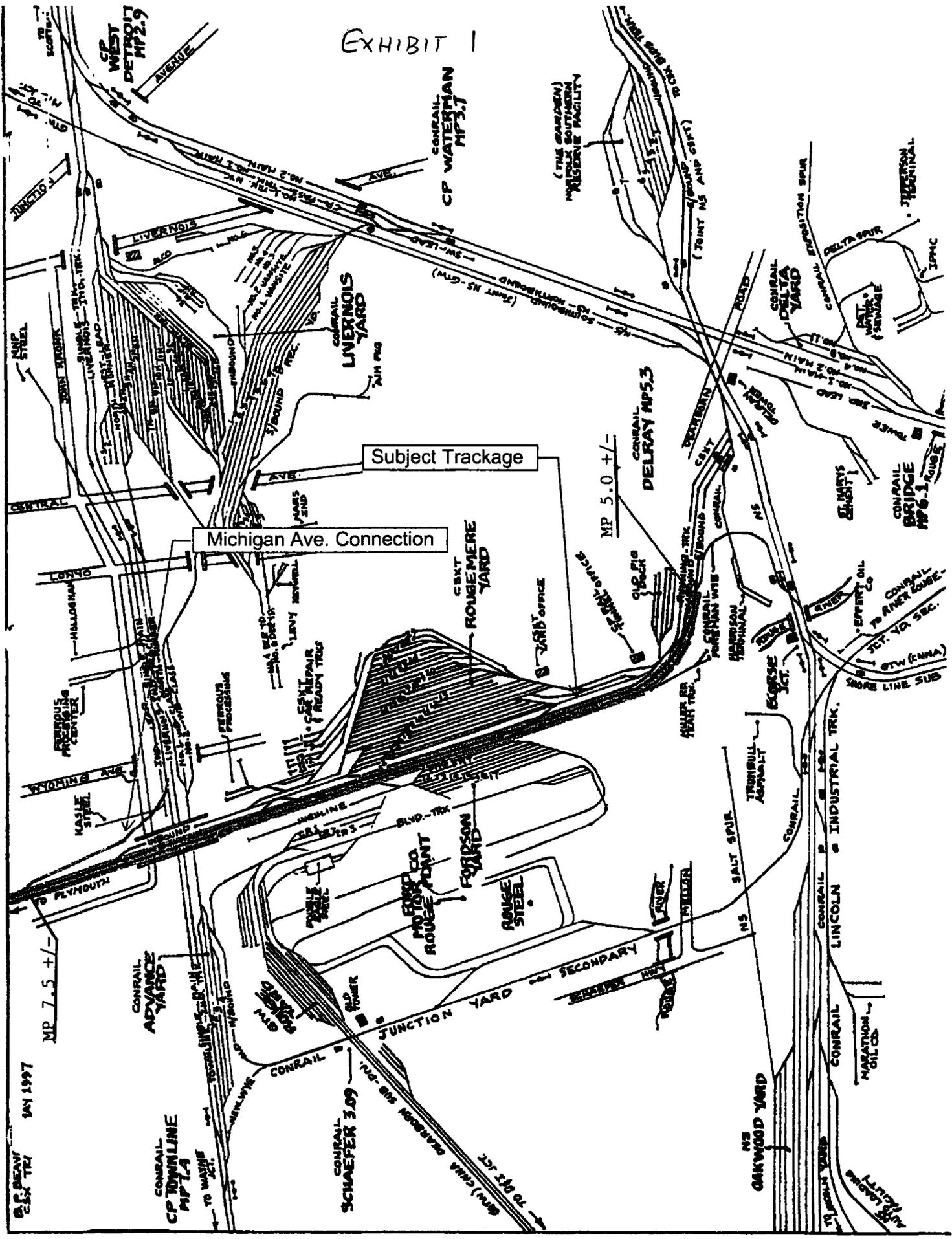


EXHIBIT 2

Trackage Rights Agreement

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, entered into as of this 19th day of August 2011, by and between **CSX TRANSPORTATION, INC.** (hereinafter referred to as "**CSXT**") and **CANADIAN PACIFIC RAILWAY COMPANY**, a corporation continued under the Canadian Business Corporation Act, d/b/a Canadian Pacific (hereinafter referred to as "**CP**");

WITNESSETH:

WHEREAS, CSXT and CP are parties to a trackage rights agreement dated May 10, 2001 that granted CP rights over a new connection CSXT constructed from Consolidated Rail Corporation's ("CRC") Michigan Line, at milepost 5.65±, to CSXT's line of railroad known as the Detroit Subdivision, milepost CH 7.5± (the "Michigan Avenue Connection"), and CSXT's Detroit Subdivision, from milepost CH 7.5± to milepost 13.5±, (the "Master Trackage Rights Agreement"); and

WHEREAS, CP leases land, track, and office space owned by CSXT for use as a CP intermodal facility (the "Intermodal Facility") at Oak Yard, Detroit, MI; and

WHEREAS, CSXT and CP are parties to a switching support agreement dated January 1, 2007 as amended per supplement dated October 1, 2010 (the "Switching Support Agreement"), under which CSXT, acting as switching agent for CP, performs switching of loaded and empty intermodal flatcars within CP's Intermodal Facility and CP's trains arriving and departing on CSXT trackage at Oak Yard and allows CSXT to handle CP's POV Freight, defined below, between Norfolk Southern Railway Company's (the "NS") Oakwood Yard and CP's Intermodal Facility; and

WHEREAS, CP has requested CSXT grant CP trackage rights over an additional portion of CSXT's Detroit Subdivision to allow CP to handle intermodal freight that CP originates at the Port of Vancouver (the "POV Freight") between Milepost CH 5.0±, in the vicinity of Fort Street at Detroit, Michigan and Milepost CH 7.5±, in the vicinity of the Michigan Avenue Connection; and

WHEREAS, CP is, with support of CSXT, making arrangements with CRC for additional trackage rights over CRC's Foreman Wye, which connects NS's Detroit District Subdivision and CSXT's Detroit Subdivision, to allow CP to handle POV Freight between the NS connection with the CRC Foreman Wye and CSXT's Detroit Subdivision; and

WHEREAS, CSXT is agreeable to granting CP's request subject to the terms and conditions contained within this Supplemental Agreement, and, as applicable, the Master Trackage Rights Agreement; and

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, CSXT hereby grants to CP the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of CSXT's trackage shown on the plan attached hereto, made part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

The CSXT Detroit Subdivision between Milepost CH 5.0± in the vicinity of Fort Street, at or near a connection between CSXT and CRC referred to as the Foreman Wye and Milepost CH 7.5±, at or near Michigan Avenue, a total distance of approximately 2.5 miles.

ARTICLE 2. USE OF SUBJECT TRACKAGE

CP's use of the Subject Trackage shall be in common with CSXT and any other user of the Subject Trackage, and CSXT's right to use the Subject Trackage shall not be diminished by this Supplemental Agreement. CSXT shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

ARTICLE 3. RESTRICTION ON USE

- (a) The Trackage Rights herein granted are non-exclusive limited overhead rights, and are granted for the sole purpose of CP using same for handling POV Freight to CP's Intermodal Facility.
- (b) CP's trains must contain POV Freight for set-off at the Intermodal Facility and may contain other overhead traffic. CP shall not have the right to set-off traffic other than POV Freight at the Intermodal Facility.
- (c) CP shall not perform any local freight service whatsoever at any point located on the Subject Trackage.
- (d) The total number of CP trains operating on the Subject Trackage shall be limited to one (1) train per day and only operating in one direction, from Milepost CH 5.0± to Milepost CH 7.5±. The Parties agree to negotiate in good faith any adjustment to the number of CP trains operating over the Subject Trackage as may be necessary as a result of changes in CP's volumes.

ARTICLE 4. COMPENSATION

- (a) For compensation purposes, the Parties agree the mileage factor for movements over the Subject Trackage shall be 2.5 miles.
- (b) The factor to be used in calculating payments to be made by CP for the Trackage Rights covered by this Agreement shall be the current rate in the Master Trackage Rights

Agreement multiplied by the mileage in Article 4(a) per car moved over the Subject Trackage or any portion thereof (hereinafter referred to as the "Current Supplemental Charge"), with the mechanics of such compensation being performed in accordance with the provisions of the Master Trackage Rights Agreement.

- (c) CP shall continue to compensate CSXT in accordance with the Master Trackage Rights Agreement in addition to the compensation arising from CP's exercise of the rights granted in this Supplemental Agreement.

ARTICLE 5. REGULATORY APPROVAL

- (a) Should this Supplemental Agreement require the prior authorization of the Surface Transportation Board ("STB"), CP at its own cost and expense will initiate and thereafter diligently pursue an appropriate application, petition, or notice to secure such authorization.
- (b) Should the STB at any time during the term of this Supplemental Agreement impose any labor protective conditions upon the arrangement, CP, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 6. TERM

This Supplemental Agreement shall be effective the day and year first above written or, in the event STB authorization is required, on the effective date such authorization is secured, and shall remain in full force and effect concurrently with the Master Trackage Rights Agreement.

ARTICLE 7. PRIOR AGREEMENTS

CSXT and CP agree to cancel the Switching Support Agreement, as amended immediately upon the commencement of CP's third-party switching operator's operations at the Intermodal Facility.

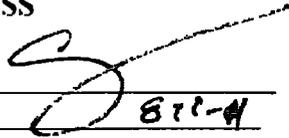
ARTICLE 8. MISCELLANEOUS PROVISIONS

Unless specifically modified by this Supplemental Agreement, all terms and conditions of the Master Trackage Rights Agreement shall remain in force and effect and shall apply to the Trackage Rights granted by this Supplemental Agreement.

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

WITNESS



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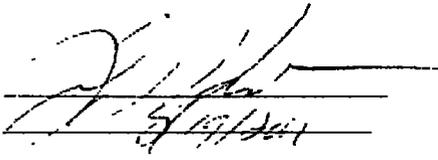
CSX TRANSPORTATION, INC.

By: 

Josh Hurrell
Director Joint Facilities

Date: August 19, 2011

WITNESS



8/19/2011

**CANADIAN PACIFIC RAILWAY
COMPANY**

By: 

James G. Stauch
Director – Network Strategy USNE

Date: August 19, 2011

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this 10th day of MAY 2001, by and between CSX TRANSPORTATION, INC. (hereinafter referred to as "CSXT") and CANADIAN PACIFIC RAILWAY COMPANY a Company incorporated pursuant to the Laws of Canada (hereinafter referred to as "CPR");

WITNESSETH:

WHEREAS, by agreement dated January 1, 1987, between CSXT's predecessor company The Chesapeake and Ohio Railway Company ("C&O") and CPR the CPR leases tracks and property from CSXT for CPR's intermodal (rail-truck; truck-rail) facility at Oak Yard, Detroit, Michigan ("CPR Oak Intermodal Facility"); and

WHEREAS, by original agreement dated July 17, 1987 between CSXT's predecessor C&O and CPR, CSXT switches CPR's intermodal traffic for CPR at the CPR Oak Intermodal Facility, and provides a transfer service for such CPR intermodal traffic between CPR at CSXT's Rougemere Yard and the CPR Oak Intermodal Facility; and

WHEREAS, CSXT plans to construct (or arrange to have constructed) and utilize a new connection between Consolidated Rail Corporation's ("CRC") Michigan Line (Milepost 5.65 +/-) and CSXT's line of railroad known as the Detroit Subdivision (Milepost CH-7.5 +/-) in the vicinity of Michigan Avenue at Detroit, Michigan ("the Michigan Avenue Connection"); and

WHEREAS, CPR is, with the support of CSXT, making arrangements with CRC for additional trackage rights over CRC's Michigan Line between the junction of the Michigan Line with trackage of the Detroit River Tunnel Partnership and the Michigan Avenue Connection; and

WHEREAS, this alternate route via the Michigan Avenue Connection by-passes CSXT's Rougemere Yard; and

WHEREAS, CPR desires to utilize the route over CRC and CSXT via the Michigan Avenue Connection to handle CPR intermodal traffic to/from the CPR Oak Intermodal Facility; and

WHEREAS, CSXT is agreeable to granting limited overhead trackage rights to CPR over CSXT's line of railroad between, and including, the Michigan Avenue Connection and the CPR Oak Intermodal Facility, solely for the purpose of handling CPR intermodal traffic with its own train and engine crews to/from the CPR Oak Intermodal Facility; and

WHEREAS, CSXT is agreeable to granting such rights to CPR under the following terms and conditions;

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, CSXT hereby grants to CPR the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of CSXT's trackage shown on the plan attached hereto, made a part hereof and marked Exhibit "I" (hereinafter referred to as the "Subject Trackage"):

(a) The Michigan Avenue Connection from the CRC/CSXT property line to CSXT's Detroit Subdivision,

(b) The CSXT Detroit Subdivision between Milepost CH 7.5+/- in the vicinity of Michigan Avenue, Detroit, Michigan, and Milepost 13.5+/- in the vicinity of Burt Road, Detroit, Michigan,

(c) CSXT trackage at Oak Yard necessary to effect delivery and pickup of CPR's intermodal trains,

(d) necessary head and tail room,

a total distance of approximately 6.3 miles.



ARTICLE 2. USE OF SUBJECT TRACKAGE

(a) CPR shall deliver and pull its intermodal traffic in its trains to and from track(s) in the vicinity of the CPR Oak Intermodal Facility, Detroit, Michigan, as designated by CSXT's representative in charge of Oak Yard.

(b) CPR's use of the Subject Trackage shall be in common with CSXT and any other user of the Subject Trackage, and CSXT's right to use the Subject Trackage shall not be diminished by this Agreement. CSXT shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

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

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



ARTICLE 3. RESTRICTION ON USE

- (a) The Trackage Rights herein granted are limited overhead rights, and are granted for the sole purpose of CPR using same for handling CPR intermodal traffic to/from its CPR Oak Intermodal Facility in CPR trains via the Michigan Avenue Connection, and CPR shall not perform any local freight service whatsoever at any point located on the Subject Trackage. For purposes of this Agreement, an intermodal car shall be considered as a steel wheeled rail flat car designed to carry containers.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- (a) CSXT shall handle CPR intermodal traffic between track(s) as designated pursuant to Article 2.(a) above and the CPR Oak Intermodal Facility in accordance with terms of the July 17, 1987 Agreement, as amended, or other such future agreement(s) between CSXT and CPR that may apply.
- (b) When operating over the Subject Trackage, CPR's locomotives and crews will be equipped to communicate with CSXT on radio frequencies normally used by CSXT in directing train movements on the Subject Trackage.
- (c) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of CSXT's representative or his designee.
- (d) Before CPR enters upon the Subject Trackage with its trains, CPR must verify that CPR has the ability to make a complete and continuous movement over the Subject Trackage to/from CSXT's line of railroad.

ARTICLE 5. COMPENSATION

- (a) Except as provided in Article 18(h) below, the factor to be used in calculating payments to be made by CPR for the Trackage Rights covered by this Agreement shall be U. S. Currency (Year 2000 as base rate) per car moved over the Subject Trackage or any portion thereof (hereinafter referred to as the "Current Charge").
- (b) CPR will pay CSXT a sum computed by multiplying: (i) the Current Charge, as may be revised in accordance with Article 6 by (ii) the number of cars (loaded and empty), locomotive and caboose units moved by CPR with its own crews and power over the Subject Trackage. Each locomotive unit and caboose, for the purpose of this Agreement shall be counted as one car. With respect to articulated units, the number of cars shall be determined by the AAR Car Type Code as defined in the UMLER Specification Manual.

The second numeric in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code "S566" would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units subject to change upon development of technology to separate units by Car Nos.)

- (c) CPR shall on or about the tenth day of each month provide CSXT an accounting of CPR's use of the Subject Trackage for the prior month. CSXT shall then render billing to CPR for CPR's previous month's use of the Subject Trackage computed in accordance with the terms and conditions of this Agreement.

ARTICLE 6. 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 2001 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 Current Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2000 Index for the first annual adjustment) as related to the index for the previous calendar year (1999 Index for the first annual adjustment) and applying that percent to the Current Charge.
- (c) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 1999; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2000; "C" to be the Current Charge; and "D" to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:
 - (1)
$$\frac{B - A}{A} = D$$
 - (2)
$$(D \times C) + C = \text{revised Current Charge, effective July 1 of the year being revised.}$$
- (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 CPR 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, 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 CSXT at the time any work is performed by CSXT.

ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE

- (a) CSXT shall maintain, repair and renew the Subject Trackage. CSXT shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but CSXT does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. CSXT shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, CPR shall not by reason of failure or neglect on the part of CSXT to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CSXT 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 CPR resulting from any such failure or neglect.
- (b) CSXT shall perform, at the expense of CPR, such additional maintenance as CPR may reasonably require or request.



ARTICLE 9. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- (a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements 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 will be subject to CSXT's approval (including design) and shall be constructed, maintained, repaired and renewed as determined by CSXT.

ARTICLE 10. ADDITIONS, RETIREMENTS AND ALTERATIONS

- (a) CSXT, from time to time and at its sole cost and expense, 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 CPR's operations beyond that required by CSXT to accommodate its operations, CSXT shall construct the additional or altered facilities and CPR shall pay to CSXT the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 11. MANAGEMENT AND OPERATIONS

- (a) CPR 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, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. CPR shall indemnify, protect, defend, and save harmless CSXT 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 CSXT 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 CPR to comply with its obligations in this regard.



- (b) CPR in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of CSXT, and the movement of CPR's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CSXT. CPR's trains shall not include locomotives, cars or equipment 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, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CSXT's operating rules and regulations without the prior consent of CSXT.
- (c) CPR shall make such arrangements with CSXT as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and CPR shall pay to CSXT, upon receipt of bills therefor, any cost incurred by CSXT in connection with the qualification of such employees of CPR, as well as the cost of pilots furnished by CSXT, until such time as such employees are deemed by the appropriate examining officer of CSXT to be properly qualified for operation as herein contemplated.
- (d) In the event of any investigation or hearing concerning the violation of any operating rule or practice by CPR's employees while on CSXT's trackage, CPR shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by CPR, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to CPR's employee or employees required to attend such hearings.
- (e) CSXT shall have the right to exclude from its trackage any employee of CPR determined by above, to be in violation of CSXT's rules, regulations, orders, practices, or instructions issued by CSXT's Timetable or otherwise. CPR shall release, indemnify, defend, and save harmless CSXT and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- (f) The trains, locomotives, cars and equipment of CPR, CSXT, 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 will afford the most economical and efficient manner of movement of all traffic.
- (g) In the event that a train of CPR shall be forced to stop on the Subject Trackage, and such stoppage is due to insufficient hours of service remaining among CPR's crew, or due to mechanical failure of CPR'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 CPR fails to maintain the speed required by CSXT on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of CPR's trains on the Subject Trackage, CSXT shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew CPR'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 CPR shall reimburse CSXT for the cost of rendering any such assistance,

- (h) 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, and CPR shall reimburse CSXT for the cost thereof.
- (i) In the event CSXT and CPR agree that CSXT should retain employees or provide additional employees for the sole benefit of CPR, the parties hereto shall enter into a separate agreement under which CPR 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 CSXT 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 CPR's trains on the Subject Trackage shall be assumed by CPR and reported and paid by CPR.

ARTICLE 13. CLEARING OF WRECKS

Whenever CPR's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CSXT 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 is owned by or under the management and control of or used by CPR 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, 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", will be divided as follows:

- (a) If a Loss occurs on the Subject Trackage involving the trains and locomotives of only one of the parties hereto, then that one party is 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 CSXT and CPR, then (i) each party 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 any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss, unless the Loss was caused solely by one party. In that event, the party causing the loss is solely responsible.
- (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 party hereto, 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 any 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 CSXT to CPR pursuant to this Agreement shall be considered as the employees of CPR while such pilots 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), all work performed by CSXT shall be deemed performed for the sole benefit of CPRS and, CPRS 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 CSXT. CPRS

- shall protect, indemnify, and save harmless CSXT and its respective parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which CPRS 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.

ARTICLE 15. CLAIMS

- (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 will 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 any party to this Agreement which is another party'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 the employing 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) Except as otherwise provided in Article 17(b) hereof, each party agrees to indemnify and hold harmless the other party and its respective parent corporations, 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. Further, except as otherwise provided in Article 17(b) hereof, 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. DEFAULT AND TERMINATION

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

ARTICLE 17. REGULATORY APPROVAL

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

ARTICLE 18. ABANDONMENT OF SUBJECT TRACKAGE

- (a) Notwithstanding the provisions of Article 19, CSXT shall have the right, subject to securing any necessary regulatory approval, to abandon the Subject Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, CSXT shall give CPR 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 Subject Trackage (or portion thereof) or to discontinue its use thereof.



- (b) If CPR desires to purchase the Subject Trackage, 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 CSXT receives more than one such offer, CSXT will exercise its statutory right to negotiate with CPR rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to CPR's acquisition of the Subject Trackage shall be governed by applicable provisions of the law.
- (c) In any one of the circumstances listed below CPR shall be deemed to have determined that it does not desire to purchase the Subject Trackage and that it desires to discontinue its use thereof:
- (i) CPR fails to submit an offer of financial assistance to purchase the Subject Trackage within the time prescribed by statute and applicable regulations, or
 - (ii) CPR, having made an offer of financial assistance to purchase the Subject Trackage, but being unable to reach agreement with CSXT 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) CPR, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
 - (iv) CPR, 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 CPR shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Trackage. If CPR does not promptly file an application seeking approval of the discontinuance of CPR's operations over the Subject Trackage, CSXT shall be deemed to have been given CPR's power of attorney to take such action on CPR's behalf.

- (d) In the event any application filed by CSXT is granted but an application filed by CPR 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 Subject Trackage to CPR (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.
- (e) In the event CSXT abandons any portion (or all) of the Subject Trackage 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 CPR 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 CSXT's application for authority to abandon is denied, CPR will withdraw any application it has filed under Subarticle (c) above.

- (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.
- (h) Notwithstanding any other provisions of this Agreement, if CSXT abandons its use of the Subject Trackage or any portion thereof and CPR does not abandon its rights or purchase the Subject Trackage pursuant to this Article 18, CPR shall reimburse CSXT the actual cost to operate and maintain the abandoned portion of the Subject Trackage. Such payment of actual costs shall be in lieu of payment of the Current Charge.

ARTICLE 19. TERM

- (a) This Agreement shall be effective the day and year first above written or, in the event Surface Transportation Board (STB) approval is required, on the effective date such approval is secured, and shall remain in full force and effect concurrently with the CPR Oak Intermodal Facility. In the event that CPR ceases to have, control or operate the CPR Oak Intermodal Facility, CSXT shall have the right to terminate this Agreement upon six (6) months written notice to CPR and CPR shall file with the STB to discontinue these Trackage Rights. If CPR fails to file for such discontinuance, CPR shall be deemed to have granted CSXT authority to make such filing on CPR's behalf and at CPR's expense and CPR shall not oppose such filing by CSXT.
- (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 20. 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 21. SUCCESSORS AND ASSIGNS



This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. CPR shall not 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 parties to this Agreement, which consent shall not be unreasonably withheld if assignment or transfer is to a parent or subsidiary, so long as it remains a parent or subsidiary of CPR, or successor of substantially all the property and franchises of CPR.

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, with a copy of same to NSR and CSXT at the following addresses:

If to CCSXT: c/o General Manager
Inter-carrier Agreements
CSX Transportation, Inc.
500 Water Street J-801
Jacksonville, FL 32202

If to CPR: c/o General Manager
Inter-carrier Agreements
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta
Canada
T2P 4Z4

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

ARTICLE 23. GENERAL PROVISIONS

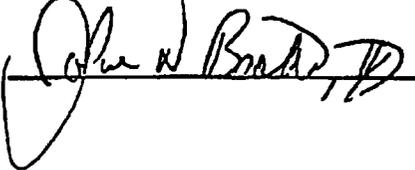
- (a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either 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.
- (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.

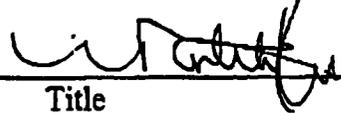
- (d) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- (e) All Article heading are inserted for convenience only and shall not affect any construction or 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 another party to this Agreement, such locomotives, cars and equipment shall be considered those of that other party under this Agreement.
- (g) This Agreement is the result of mutual negotiations of the parties hereto, none of whom shall be considered the drafter for purposes of contract construction.
- (h) None of the parties 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 parties, 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



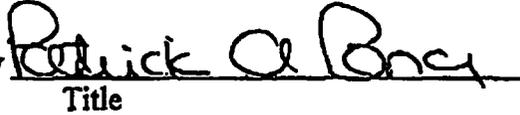
CSX TRANSPORTATION, INC.

By 
_____ Title

WITNESS



CANADIAN PACIFIC RAILWAY COMPANY

By 
_____ Title



CSXT M.P. 13.5±
Vicinity Burt Road

CPR Oak Intermodal Facility

CSXT
Oak
Yard



CSXT Detroit Subdivision

Control
Michigan Line

Detroit

CSXT M.P. CH 125±
Michigan Avenue Connection
CSXT
Control

CSXT
Rougemeier
Yard

Delvey

Detroit River

USA
CANADA

Windsor
Ontario
Canada

Detroit, Michigan

Exhibit "I"

CPR limited trackage rights over CSXT's
Detroit Subdivision between M.P. CH 7.5± and
M.P. CH 13.5± including rights over Michigan
Avenue Connection and Head Tail Room
lot To Scale
May 1, 2001

EXHIBIT 3
Caption Summary

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION
FINANCE DOCKET NO. 35548

CANADIAN PACIFIC RAILWAY COMPANY
— TRACKAGE RIGHTS EXEMPTION —
CSX TRANSPORTATION, INC.

CSX Transportation, Inc. ("CSXT") has agreed to grant overhead trackage rights to Canadian Pacific Railway Company dba Canadian Pacific ("CP") between Milepost CH 5.0± and Milepost CH 7.5± on CSXT's Detroit Subdivision, a total distance of approximately 2.5 miles in Wayne County, MI. The purpose of the transaction is to provide a more efficient routing for CP's trains into the Intermodal Facility at Oak Yard in Detroit, Michigan. This transaction will be consummated on or immediately after the effective date of this Notice of Exemption.

This Notice is filed under § 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.

Dated:
By the Board,

Rachel D. Campbell, Director
Office of Proceedings