

LAW OFFICES OF
LOUIS E. GITOMER

LOUIS E. GITOMER
LOU_GITOMER@VERIZON.NET

225379

THE ADAMS BUILDING, SUITE 301
600 BALTIMORE AVENUE
TOWSON, MARYLAND 21204-4022
(202) 466-6532
FAX (410) 332-0885

July 17, 2009

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

ENTERED
Office of Proceedings

JUL 17 2009

Part of
Public Record



RE: Finance Docket No. 35281, *CSX Transportation, Inc.—Trackage Rights Exemption—Commonwealth Railway Incorporated*

Dear Acting Secretary Quinlan:

Enclosed for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 180.2(d)(8), a diskette with the file in WORD and pdf format, 20 extra copies of the map, and a check covering the \$1,200.00 filing fee for the Notice.

Please time and date stamp the extra copy of this letter and the Verified Notice of Exemption and return them with our messenger.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosures

FEE RECEIVED
JUL 17 2009
SURFACE
TRANSPORTATION BOARD

FILED
JUL 17 2009
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

225379

FINANCE DOCKET NO. 35281

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—
COMMONWEALTH RAILWAY INCORPORATED

VERIFIED NOTICE OF EXEMPTION

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

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou_Gitomer@verizon.net

Attorneys for: CSX Transportation, Inc.

Dated: July 17, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35281

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—
COMMONWEALTH RAILWAY INCORPORATED

VERIFIED NOTICE OF EXEMPTION

CSX Transportation, Inc. (“CSXT”) submits this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. §1180.2(d)(7) for overhead trackage rights over the rail line of the Commonwealth Railway Incorporated (“CWRY”) between Suffolk, milepost 16.50, and Churchland, VA, milepost 9.90, a distance of approximately 6.60 miles. The trackage rights will enhance CSXT’s intermodal operations into and out of the Maersk Terminal in Portsmouth, VA. The parties are negotiating a written agreement for the trackage rights (Exhibit B), which are not sought as a responsive application in a rail consolidation proceeding.

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

Section 1180.6 Supporting Information

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

CSXT is acquiring overhead trackage rights from CWRY between Suffolk, milepost 16.50, and Churchland, VA, milepost 9.90, a distance of approximately 6.60 miles.

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

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

Commonwealth Railway Incorporated
4337 Pablo Oaks Court
Suite 200
Jacksonville, FL 32224

Questions and correspondence concerning this notice may be addressed to:

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

Louis E. Gitomer
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(401) 296-2250
Lou_Gitomer@verizon.net

(a)(1)(ii) Consummation Date

The transaction is scheduled to be consummated on or shortly after August 16, 2009.

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

CSXT is seeking to improve access to the Maersk Terminal in the port of Norfolk so as to provide competitive service to the Norfolk Southern Railway Company for intermodal and other traffic originating and destined for the Port.

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

CSXT owns and operates about 23,000 miles of railroad in the States of Alabama, Connecticut, District of Columbia, Delaware, 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, and the Provinces of Ontario and Québec.

CWRY owns and operates railroad property in the Commonwealth of Virginia.

The overhead trackage rights are located in the Commonwealth of Virginia.

(a)(6) Map

A map illustrating the involved trackage rights is attached as Exhibit A.

(a)(7)(ii) Agreement

A copy of the redacted current draft of the trackage rights agreement being negotiated by the parties is attached as Exhibit B. A copy of redacted final signed contract will be submitted within 10 days of the date that the agreement is executed.

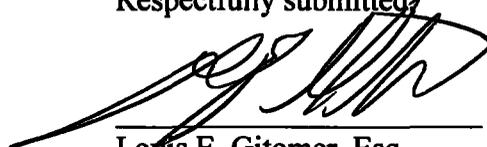
Labor Protection

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

Environmental and Historic Matters

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

Respectfully submitted,



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

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

Dated: July 17, 2009

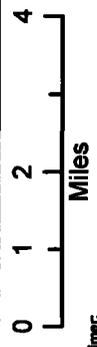
EXHIBIT A-MAP

Exhibit I



CSXT TRACKAGE RIGHTS OVER CWRY - SUFFOLK TO MARSHALLING YARD

- CSXT
- CWRY
- CSXT TRACKAGE RIGHTS



Disclaimer: Any user should obtain independent verification of all information contained on this MAP. CSX Real Property, Inc. GIS Department, its employees, agents, and personnel, disclaims, and shall not be held liable for, any and all damage, loss or liability, whether direct, indirect or consequential which arises or may arise from this MAP information or the use thereof by any person or entity.

Proprietary Information: The CSX RPI GIS Dept. has copyrighted the map product and database on this MAP and they reserve all rights therein. No portion of this product or any databases on this MAP may be reproduced in any form or by any means without the express written authorization of the CSX RPI GIS Dept. or its authorized agents.



For Copies, Comments or Revisions, Contact gis@csx.com
 Drawn By: Larry Fenwick
 Rev. Date: April 28, 2008

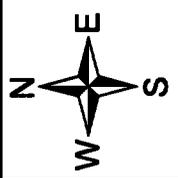
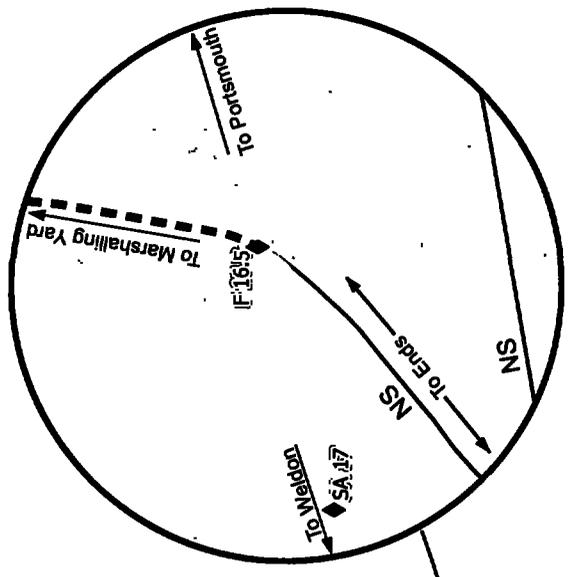
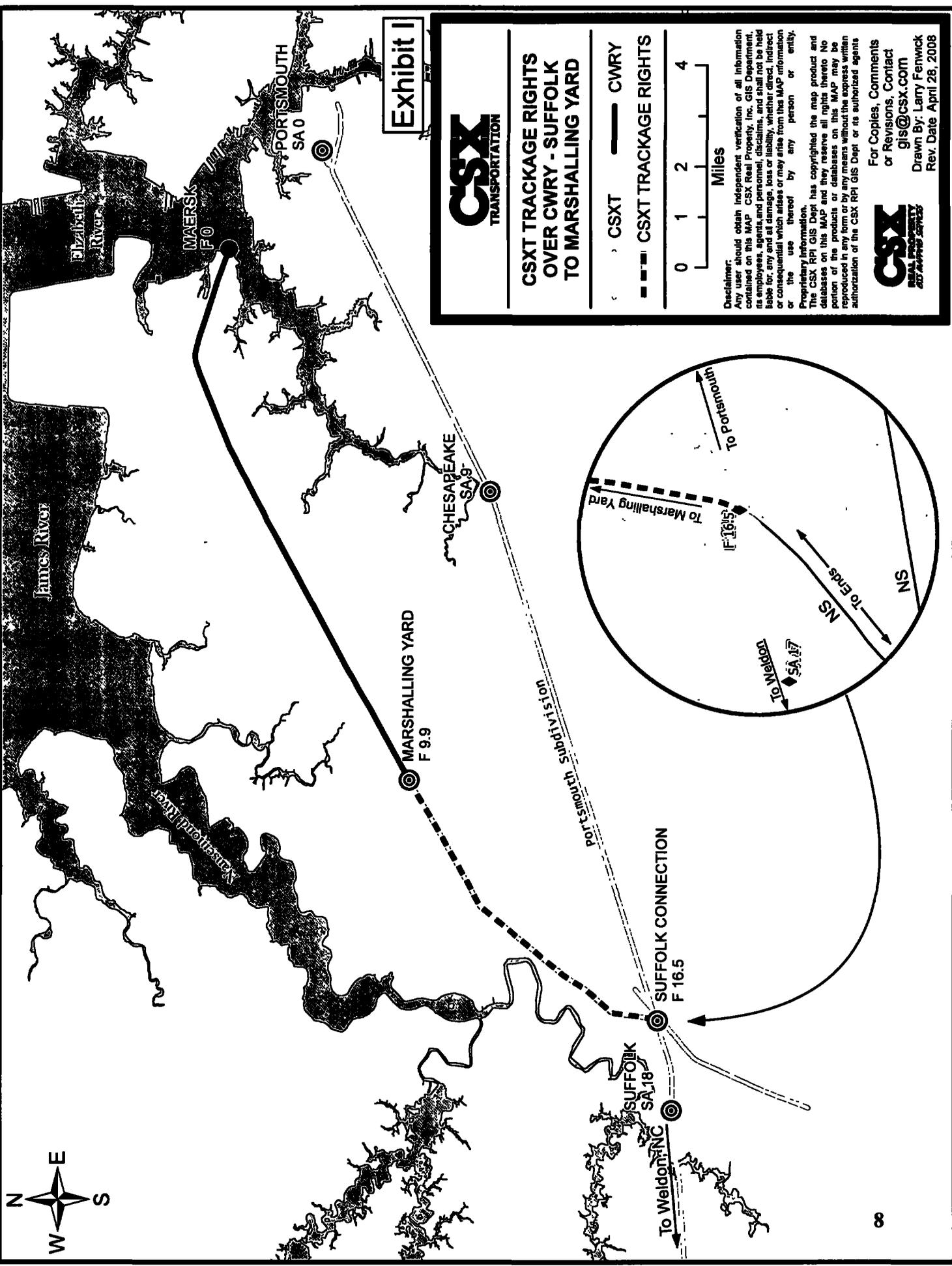


EXHIBIT B-AGREEMENT

DRAFT

TRACKAGE RIGHTS AGREEMENT

Between

CSX TRANSPORTATION, INC.

And

COMMONWEALTH RAILWAY INCORPORATED

THIS TRACKAGE RIGHTS AGREEMENT (hereinafter referred to as "Agreement") made this 16th day of August, 2009 by and between **COMMONWEALTH RAILWAY INCORPORATED** a Virginia corporation (hereinafter referred to as "CWRV" or "Owner") and **CSX TRANSPORTATION, INC.** a Virginia corporation (hereinafter referred to as "CSXT" or "User");

WITNESSETH:

WHEREAS, CWRV is the owner of the railroad between Milepost 0.00 at Portsmouth, Virginia, and Milepost 16.50 at Suffolk, Virginia (hereinafter referred to as "CWRV Line"); and

WHEREAS, CSXT has constructed a connection between its Portsmouth Subdivision Line and the CWRV Line at approximately Milepost 16.50; and

WHEREAS, CWRV is willing to allow CSXT the right to use the Subject Trackage, as that term is defined below, on the terms and conditions hereinafter set forth; and

WHEREAS, CWRV is also granting Norfolk Southern Railway Company (NSR) access to use the Subject Trackage pursuant to a separate agreement between CWRV and NSR.

NOW, THEREFORE, the parties agree as follows:

Section 1. GRANT OF TRACKAGE RIGHTS

- (A) Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate its trains, locomotives, cars and equipment with its own crews, in its own account over the segment of Owner's railroad between Milepost 16.50 near Suffolk, VA and Milepost 9.90 near Churchland, VA, a distance of approximately 6.60 miles as illustrated on the CSXT map revised April 28, 2008 attached hereto, made a part hereof and marked Exhibit "I" (hereinafter referred to as the "Subject Trackage"). The Subject Trackage shall be used for the purpose of accessing Owner's Marshalling Yard and related mainline trackage which are designated as "Interchange Tracks" in a separate Interchange Agreement of even date hereto between Owner and User.

- (B) User's access to the Subject Trackage and the Marshalling Yard shall be under substantially the same terms and conditions as that provided to any other carrier[s] connecting with the CWRV Line.

Section 2. USE OF SUBJECT TRACKAGE

- (A) User's use of the Subject Trackage shall be in common with Owner and any other User of the Subject Trackage, and Owner's right to use the Subject 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 Subject Trackage, subject to the provisions of Section 1(B).
- (B) Except as may otherwise be provided by this Agreement or the aforementioned Interchange Agreement, User 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, upon prior approval of Owner, shall preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purposes.
- (C) Owner and its dispatching agent, initially a CWRV affiliate, Portland & Western Railroad, Inc. ("PNWR") shall have exclusive control of the management and operation of the Subject Trackage, including sole operational responsibility of the signal control system provided for in Section 10(J). 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 Subject Trackage by User is interrupted or delayed at any time from any cause. For purposes of this Agreement, the actions of PNWR shall in all respects, be considered the actions of Owner.
- (D) User may not grant rights of any nature on the Subject Trackage to other parties, or use the rights to haul traffic in the account of any other carrier.
- (E) User shall have the right to operate in either direction of the Subject Trackage.

Section 3. RESTRICTION ON USE

The Subject Trackage Rights herein granted are granted for the purpose of User using Subject Trackage to interchange railcars with Owner at, or in the vicinity of, Owner's Marshalling Yard in accordance with the aforementioned Interchange Agreement. Except as provided for in Section 1(B), User shall not perform any local freight service whatsoever at any point located on Subject Trackage. Further, User may not use the Subject Trackage or the rights granted hereunder to interchange

with any other carrier that, now or in the future, connects with the Subject Trackage.

Section 4 MISCELLANEOUS SPECIAL PROVISIONS

- (A) When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements (in accordance with Section 10[J]) on the Subject Trackage.
- (B) 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 Owner's representative or his designee.
- (C) Before User enters upon the Subject Trackage with its trains from either direction, Owner must confirm to User that the Subject Trackage is available to User to allow User to make a complete and continuous, uninterrupted movement to the other end of the Subject Trackage, and User must confirm to Owner that its crews have the ability to make a complete and continuous, uninterrupted movement to the other end of Subject Trackage.

Section 5. COMPENSATION

Section 6. PAYMENT OF BILLS

- (A) Any payments called for under this Agreement shall be made within thirty (30) days after the date of the 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 three (3) years from the date of the billing or other applicable activity.

- (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 or shall include actual costs and expenses, upon mutual agreement of the parties.

Section 7. MAINTENANCE OF SUBJECT TRACKAGE

- (A) Owner shall maintain, repair and renew the Subject Trackage with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Owner will keep the Subject Trackage, including applicable structures, in a condition that will permit User's unrestricted operation of six-axle locomotives weighing up to 420,000 pounds and fully-loaded double-stack container railcars equipped with 125-ton trucks. Owner will maintain a vertical clearance of at least twenty-three feet (23') above top-of-rail throughout the Subject Trackage. Owner shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use reasonable efforts to avoid such interruptions. User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Subject 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 sole expense of User and within a time period that is acceptable to User, such additional maintenance as User may reasonably require or request on the Subject Trackage.

Section 8. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

- (A) Existing or proposed connections or facilities, which are jointly used by the parties hereto or other carrier(s) under existing or proposed agreements, shall 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) If, in the opinion of User, a new or upgraded connection is required at a point of permitted entry or exit other than the endpoints (other than such connection[s] being handled between Owner and any other carrier[s]), or, if in the opinion of User, other upgrading, including but not limited to switches, power switches, signals, communications, etc., is required for operational efficiency, then Owner will, subject to its own operational needs, cooperate, and User will be responsible for funding that construction/upgrading applicable to User at actual cost or a cost mutually agreed to by Owner and User. Such construction/upgrading shall be progressed as follows:
- (i) User or others shall furnish all labor and materials and shall construct such portions of the tracks located on the right-of-way of User or others, which connect the respective lines of the parties hereto and/or other carrier(s).
 - (ii) Owner shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way of Owner, which connect the respective lines of the parties hereto and/or other carrier(s). Upon termination of this Agreement, Owner may at its option remove any portion of the Subject Trackage and appurtenances located on Owner's right-of-way, constructed as a result of this Section, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.
 - (iii) Owner will maintain, repair and renew the constructed/upgraded portions of the tracks located on the right of way operated by Owner which connect the respective lines of the parties hereto at the sole cost and expense of User and/or other carrier(s).
 - (iv) The foregoing provisions of this Section 8 notwithstanding, the new connection between Owner and User being constructed at User's MP 16.5 in connection with this Agreement shall be covered as to construction, installation and maintenance in a separate Control Point Agreement of even date herewith to be entered into between the parties on or before the effective date of this Agreement.

Section 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

- (A) Owner, from time to time and at its sole cost and expense, may make changes in, additions and betterment 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 betterment to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate the operations of User and/or other carrier(s) beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities and User and/or other carrier(s) shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

Section 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, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject 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 (including reasonable attorneys fees and expenses and court and litigation costs) ("Costs") 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, to the extent such Costs are attributable to the failure of User to comply with its obligations in this regard.
- (B) User in its use of the Subject 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, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User'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 or as contained herein, 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 Owner's operating rules and regulations or contained herein 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, cars and equipment over the Subject 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.

- (l) The trains, locomotives, cars and equipment of User, Owner, and any other present or future User of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to any party and in such manner**

as will afford the most economical and efficient movement of all traffic.

- (J) In the event that a train of User shall be forced to stop on the Subject Trackage, 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 Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance 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 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 Subject Trackage, such work shall be done by Owner or its agents or contractors (unless the local operating officers agree for User to perform such work), 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
- (M) Owner has agreed to allow installation of one powered switch and signal control on the Subject Trackage which Owner will exclusively control. Movements of any carrier over the portion of the Subject Trackage equipped with the signal control system will be authorized by signal indication in accordance with Owner's operating rules and will be directed by Owner in a fair and impartial manner. The Owner may not change the provisions of this Section 10(J) without first obtaining written mutual consent of User and or other carrier(s) connecting with Owner's line.

Section 11. MILEAGE AND CAR HIRE

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

Section 12. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner or its agent or contractor (unless the respective local

operating officers in charge mutually agree for User to perform such work) 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 Section 13 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 User at the time of such wreck, shall be promptly delivered to it.

Section 13. LIABILITY

The responsibility of the parties hereto, as between themselves, for loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with exercise of the rights granted in this Agreement, shall be borne and determined as follows:

- (A) Whenever any loss of, damage to, or destruction of any property whatsoever (except Cargo Related Claim Liability as defined hereinafter), or injury to or 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, occurs with any of the trains, locomotives, cars, or equipment of, or in the account of CWRV being involved, without any of the trains, locomotives, cars, or equipment of, or in the account of CSXT being involved, CWRV shall assume all liabilities therefor and bear all costs and expenses in connection therewith, including without limitation all costs and expenses referred to in Section 12 hereof, and shall forever protect, defend, indemnify, and save harmless CSXT and its directors, officers, agents or employees from and against all such liabilities, costs, and expenses, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of any of such indemnitees.

- (B) Whenever any loss of, damage to, or destruction of any property whatsoever (except Cargo Related Claim Liability as defined hereinafter), or injury to or 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, occurs with any of the trains, locomotives, cars, or equipment of, or in the account of CSXT being involved, without any of the trains, locomotives, cars, or equipment of, or in the account of CWRV being involved, CSXT shall assume all liabilities therefor, and bear all costs and expenses in connection therewith, including, without limitation all costs and expenses referred to in Section 12 hereof, and CSXT shall forever protect, defend, indemnify, and save harmless CWRV and its directors, officers, agents, and employees from and against all such liabilities, costs, and expenses, regardless of whether caused in whole or in part by the fault, failure,

negligence, misconduct, nonfeasance or misfeasance of any of such indemnitees.

- (C) Whenever any loss of, damage to, or destruction of any property whatsoever (except Cargo Related Claim Liability as defined hereinafter), or injury to or 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, occurs with any of the trains, locomotives, cars, or equipment of, or in the account of both CWRV and CSXT being involved, CWRV and CSXT shall each separately assume and bear all liabilities, costs, and expenses for loss of and damage to its own trains, locomotives, cars (including without limitation lading), and equipment operated by it and for injury to and death of each of its own respective officers, agents, and employees, and persons in its care and custody. All liabilities, costs, and expenses for injuries to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other properties (including without limitation the Interchange Access Trackage and/or Interchange Tracks as defined in the Interchange Agreement.) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by CWRV and CSXT, including without limitation all costs and expenses referred to in Section 12 hereof.
- (D) Notwithstanding any other provisions of this Agreement, each party shall be responsible for liability for any death, personal injury, or damage to property to the extent such death, personal injury, or damage to property was caused by acts or omissions of any of that party's employees while under the influence of drugs or alcohol. An FRA positive test for drugs or a FRA alcohol test of .04 or greater shall establish that an employee was "under the influence of drugs or alcohol," for the purposes of this Section 13.
- (E) For the purposes of this Section 13, as between CSXT and CWRV, references to "CWRV" shall include any other carrier not party to this Agreement. Whenever any liabilities, costs, or expenses are assumed by or apportioned to a party hereto under the foregoing provisions of this Section 13, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against those liabilities, costs, and expenses so 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 any of such indemnitees.
- (F) In every case of death or injury suffered by an employee of either CWRV or CSXT, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions

of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- (G) Notwithstanding the provisions of Section 25(D) of this Agreement, for the purposes of this Section 13 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or the right-of-way thereof for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (H) The terms "liability", "damage", "damages", or "injury" as used in this Section 13 shall include related court costs, expenses, and attorney's fees. Liability shall not include fines and penalties, which shall always be paid by the party against whom they were assessed.
- (I) Under no circumstances will either of the parties to this Agreement assert a claim for punitive or exemplary damages against the other party.
- (J) Except for the activities provided for in Section 10(I) hereof, each party hereto agrees to indemnify and hold harmless the other party hereto 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, or lawsuits brought by or on behalf of its own employees or by any of their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of this Agreement and operations hereunder, or pursuant to a collective bargaining agreement and arising out of a party's operations hereunder. It is the intention of the parties hereto that each of them shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances or lawsuits filed by its own employees arising under its collective bargaining agreements with its employees.
- (K) (i) All liability arising from or growing out of loss, damage and delay to lading, including all incidental, related and miscellaneous damages resulting directly or indirectly there from that is covered by the AAR Freight Claim Article (all such liability being hereinafter called "Cargo Related Claim Liability") will be apportioned between CWRV and CSXT in accordance with applicable rules and procedures of the AAR's Damage Prevention and Freight Claim Article (hereinafter the "AAR Freight Claim Article") including its Rules of Order, Principles and Practices, Freight Claim Rules, and prior arbitration decisions

interpreting or construing any of them (hereinafter collectively referred to as "AAR Rules and Procedures").

(ii) In the event of any dispute about responsibility to investigate, adjust and defend a claim under Section 14(B) below or about apportionment of liability under this subsection (K), CWRV and CSXT shall invoke the AAR Freight Claim Article to provide for arbitration under the AAR Rules and Procedures. CWRV and CSXT will cooperate fully in any such arbitration proceeding and will be bound by the final decision of the AAR Freight Claim Article arbitration or appeal committee. If the AAR Freight Claim Article arbitration or appeal committee declines to act as arbitrator, any such dispute will be arbitrated in accordance with the provisions of Section 19 of this Agreement.

Section 14. INSURANCE

- (E) The insurance shall be evidenced by a current certificate furnished by CWRV to CSXT as an additional insured with its return of executed Agreement. Subsequently, annual renewal certificates of insurance shall be furnished to:

CSX Transportation, Inc.
Insurance Department
500 Water Street, C907
Jacksonville, FL 32202

Such certificate shall be subject to the reasonable prior approval of CSXT's Insurance Department. All of the required endorsements and notice provisions shall be stated on the certificate of insurance that is provided to CSXT. In addition, CWRV shall provide CSXT's Insurance Department notice of any claim and any other correspondence dealing with insurance and insurance matters.

- (F) It is understood between the parties that CSXT is currently self-insured. If, however, that changes, CSXT will provide CWRV with evidence of insurance naming CWRV as an additional insured with coverage in amounts and limitations consistent with the amounts required to be provided by CWRV under Section 14(a) of this Agreement.

Section 15. INVESTIGATION

- (A) Except as provided in subsection (B) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with Section 13 of this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of Section 13 of this Agreement.
- (B) (i) Notwithstanding the foregoing, for Cargo Related Claim Liability arising from a shipment involving both CWRV and CSXT and no other interline carriers, CSXT will investigate, adjust, and defend all claims and suits filed against it or CWRV. For Cargo Related Claim Liability arising from a shipment involving CWRV, CSXT and other interline carrier(s), CSXT will either investigate, adjust, and defend claims and suits filed with it or, at its option, arrange for one of the other interline carriers to investigate, adjust, and defend claims and suits, provided that CSXT shall not make any such arrangements in violation of any applicable AAR Rules and Procedures. CSXT shall process

all such claims and suits, or arrange for their processing by such interline railroad, in compliance with all applicable laws, government regulations, offering circulars and transportation contracts. CSXT also will process its handling of such claims or suits with CWRV in compliance with all applicable AAR Rules and Procedures.

- (ii) If any claim or suit is asserted against CWRV for Cargo Related Claim Liability arising from a shipment involving both CWRV and CSXT, CWRV will immediately advise CSXT and forward to CSXT all original claim and/or suit papers received by CWRV.
- (C) In the event a claim or suit is asserted against CWRV or CSXT which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.
- (D) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under Section 13 of this Agreement shall be included as costs and expenses in applying the liability provisions set forth in Section 13 of this Agreement, except that salaries or wages of full-time claim 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. Notwithstanding the foregoing, all costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit covered by Section 13(K) of this Agreement shall be apportioned and/or borne in accordance with the AAR Rules and Procedures. In the absence of any governing AAR Rules and Procedures (and the provisions of AAR Freight Claims Article shall be the final arbitrator of whether any AAR Rules and Procedures govern), such costs and expenses arising in connection with the investigation, adjustment, and defense of such claims or suits shall be apportioned as liability for other loss, damage or destruction is otherwise apportioned under Section 13 of this Agreement.
- (E) Excluding Cargo Related Claim Liability claims governed by Sections 13(K) and 15(B), 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) It is understood that nothing in this Section 15 shall modify or waive the conditions, obligations, assumptions, or apportionment's provided in Section 13 hereof.

Section 16. CLAIMS

- (A) The parties shall agree between themselves on the most fair, practical and

efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each party shall be responsible for losses occurring to lading in its possession for the account of such party and (ii) the parties shall follow relevant AAR rules and formulas in providing for the allocation of losses which are either of undetermined origin or in cars handled in interline service by or for the account of the parties.

- (B) Each party shall indemnify and hold harmless the other parties 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 or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the parties' intention that each party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

Section 17. TERM, DEFAULT AND TERMINATION

- (A) This Agreement shall become effective (hereinafter referred to as "Commencement Date") as of the first date signed by both Owner and User, and if required, following receipt of any regulatory approvals to be obtained by CSXT under Section 18, and following the expiration of any time periods required by the issuance of labor notices by Owner and/or User, and shall remain in full force and effect for an initial term of twenty (20) years provided that User is not in default under this Agreement, User shall have the option, of extending this Agreement for two (2) additional terms of five (5) years each by notice in writing given at least (6) months prior to the end of the current term.
- (B) Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to termination thereof.
- (C) In the event of any substantial failure on the part of User to perform its obligations provided under the terms of this Trackage Rights 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 Agreement. 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.

- (D) The rights, benefits, duties and obligations running from or to User under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon termination of this Agreement.

Section 18. REGULATORY APPROVAL

The parties agree that this Agreement, or portions of this Agreement, will be submitted at CSXT's sole expense, to the STB for approval. CWRV agrees to support CSXT's submission(s) to the STB. User shall provide a draft of any filing to CWRV for its review prior to filing.

Section 19. ABANDONMENT OF SUBJECT TRACKAGE

- (A) Owner shall have the right, subject to securing any necessary regulatory approval, to abandon the Subject Trackage. 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 Subject Trackage.
- (B) If User desires to purchase the Subject Trackage, it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. Thereafter, the rights and obligations of the parties in respect to User's acquisition of the Subject Trackage shall be governed by applicable provisions of the law.
- (C) In any one of the circumstances listed below, User 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) User fails to submit an offer of financial assistance to purchase the Subject Trackage within the time prescribed by statute and applicable regulations, or
 - (ii) User, having made an offer of financial assistance to purchase the Subject Trackage, 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 Subject Trackage. If User does not file an application seeking approval of the discontinuance of User's operations over the Subject Trackage within ninety (90) days, 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 Sub-section (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 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 the Subject Trackage (or portion thereof) under circumstances which (because of changes in the law or otherwise) are not susceptible of 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, Owner and/or User will withdraw any application(s) it (they) has (have) filed under Sub-section (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 any party hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party (CWRY, for itself and, for the purpose of this Agreement, any other carrier[s]) 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.

Section 20. ARBITRATION

- (A) Except for claims subject to the arbitration provisions of Article 13(K), any dispute arising between the parties hereto with respect to any of the provisions of this Agreement which cannot be settled by the parties themselves shall be settled through binding arbitration by a sole, disinterested arbitrator knowledgeable in railroad matters to be selected jointly by the parties who shall apply the Commercial Arbitration Rules of the

American Arbitration Association (“AAA”). If the parties fail to select such arbitrator within sixty (60) days after demand for arbitration is made by either party hereto, then either party may submit the matter to AAA in Portsmouth, Virginia, for binding arbitration under AAA’s Commercial Arbitration Rules. The Arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal laws or antitrust laws. The decision of the arbitrator shall be final and conclusive upon the parties hereto, and shall be enforceable in a court of competent jurisdiction. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the parties hereto.

- (B) Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbitrator.
- (C) All proceedings, testimony, submissions of the parties and award of the arbitrator shall be private and confidential between the parties and shall not be disclosed to another party, except in connection with a judicial action to enforce, vacate or modify the arbitration award or as required by law, but under the strictest confidentiality agreements or protective order the party can obtain.

Section 21. SUCCESSORS AND ASSIGNS

- (A) Except as provided herein, neither this Agreement (including the documents and instruments referred to herein) nor any of the rights, interests or obligations hereunder, shall be assigned by any party, including by operation of law, without the prior written consent of the other party(ies), except to a controlled subsidiary, or in the case of CWRY, a controlled subsidiary of its parent company.
- (B) Either party without the consent of the other party may assign all of its rights and obligations under this Agreement only to any successor in the event of a merger, consolidation, sale of all or substantially all its assets, if such assignee executes and delivers to the other party hereto an agreement reasonably satisfactory in form and substance to such other party under which such assignee, which is reasonably satisfactory to the other party, assumes and agrees to perform and discharge all the obligations and liabilities of the assigning party; provided that any such assignment shall not relieve the assigning party from the performance and discharge of such obligations and liabilities.

Section 22. NOTICE

Any notice required or permitted to be given by one party to another 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 User: Director Passenger & Joint Facility Contracts
CSX Transportation, Inc.
500 Water St., J 315
Jacksonville, FL 32202

If to Owner: President
Commonwealth Railway Incorporated
4337 Pablo Oaks Court
Suite 200
Jacksonville, FL 32224

with a copy to:
General Counsel
Genesee & Wyoming Inc.
66 Field Point Road, 2nd floor
Greenwich, CT 06830

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

Section 23. FORCE MAJEURE

Owner shall not be responsible to User and User shall not be responsible to Owner 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, terrorism or threatened acts of terrorism, 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.

Section 24. CONFIDENTIALITY

During the term of this Agreement and during the three (3) years after termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided hereunder will be kept confidential and will not be disclosed by either CWRV or CSXT to any party, except: (i) as required by law or by rule, order or regulation of any court or regulatory agency with jurisdiction over the subject matter to this Agreement, (ii) as may be necessary or appropriate for a party hereto to

enforce its rights under this Agreement; (iii) to an independent consultant who agrees to be bound by the confidentiality terms hereof, if reasonably requested by the Commonwealth of Virginia or any other party entitled to equal access to the Subject Trackage to the extent required to establish that access is equal; (iv) to a parent, affiliate, subsidiary company or attorney and/or advisors of either party; (v) to an auditing firm retained by either party that has provided written assurance to abide by these confidentiality provisions.

Section 25. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other parties shall also extend to and indemnify the parent corporation, subsidiaries, affiliates and partnerships of such other parties, and all of their respective directors, officers, agents, employees and partners.

Section 26. GENERAL PROVISIONS

- (A) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against any 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 all 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 Section headings are inserted for convenience only and shall not affect any 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 (CWRY, for itself and, for the purpose of this Agreement, any other carrier[s]), such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties (CWRY, for itself and, for the purpose of this Agreement, any other carrier[s]) and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party (CWRY, for itself and, for the purpose of this Agreement, any other carrier[s]). Whenever such locomotives, cars or equipment are owned or leased by one party to this

Agreement (CWRV, for itself and, for the purpose of this Agreement, any other carrier[s]) and are in the possession or account of another party to this Agreement (CWRV, for itself and, for the purpose of this Agreement, any other carrier[s]), such locomotives, cars and equipment shall be considered those of the other party under this Agreement (CWRV, for itself and, for the purpose of this Agreement, any other carrier[s]).

- (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) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its conflicts of laws provisions.

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

WITNESS

COMMONWEALTH RAILWAY
INCORPORATED

DRAFT

_____ By _____
Title

WITNESS

CSX TRANSPORTATION, INC.

DRAFT

_____ By _____
Title

**EXHIBIT C-FEDERAL REGISTER
NOTICE**

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35281

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—
COMMONWEALTH RAILWAY INCORPORATED

Commonwealth Railway Incorporated will agree to grant overhead trackage rights to CSX Transportation, Inc. between Suffolk, milepost 16.50, and Churchland, VA, milepost 9.90, a distance of approximately 6.60 miles. The overhead trackage rights will be effective on or after August 16, 2009.

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

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

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35281, 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 Steven C. Armbrust, CSX Transportation, Inc., 500 Water Street J-150, Jacksonville, FL 32202, and Louis E. Gitomer, Law

Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204,

Lou_Gitomer@verizon.net.

Dated:

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

Anne K. Quinlan
Acting Secretary

VERIFICATION

State of Florida)
)ss
County of Duval)

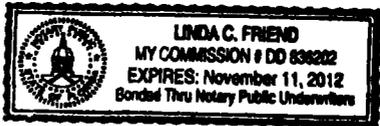
I, Virginia Beck, being duly sworn, depose and state that I am
Director of Passenger Carrels of CSX Transportation, Inc., that I am authorized to make this
verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted
therein are true and accurate to the best of my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

Virginia Beck
7/16/09

Subscribed and sworn to before me this 16th day of July 2009.

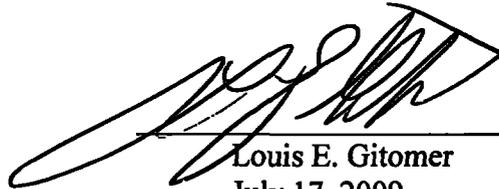
Linda Friend
Notary Public

My Commission expires: 11-11-2012



CERTIFICATE OF SERVICE

I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket 35281, *CSX Transportation, Inc.—Trackage Rights Exemption—Commonwealth Railway Incorporated*, to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governor, Public Service Commission, and Department of Transportation of the Commonwealth of Virginia.



Louis E. Gitomer
July 17, 2009