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**ENTERED  
Office of Proceedings**

**JAN 14 2011**

**Part of  
Public Record**

January 14, 2011

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

RE: Finance Docket No. 35460, *CSX Transportation, Inc.—Temporary Trackage  
Rights—Norfolk Southern Railway Company*

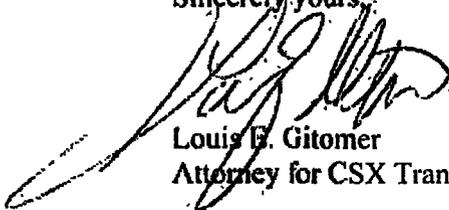
**EXPEDITED HANDLING REQUESTED**

Dear Ms. Brown:

Enclosed for e-filing are a Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(8), and a Petition for Waiver. Payment of the \$1,200.00 filing fee for the Notice and \$550.00 filing fee for the Waiver have been forwarded under separate cover.

If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer  
Attorney for CSX Transportation, Inc.

Enclosures

**FEE RECEIVED**

**JAN 14 2011**

**SURFACE  
TRANSPORTATION BOARD**

**FILED**

**JAN 14 2011**

**SURFACE  
TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35460

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CSX TRANSPORTATION, INC.  
—TEMPORARY TRACKAGE RIGHTS—  
NORFOLK SOUTHERN RAILWAY COMPANY

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VERIFIED NOTICE OF EXEMPTION

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

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

Attorneys for: CSX Transportation, Inc.

Dated: January 14, 2011

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35460

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CSX TRANSPORTATION, INC.  
—TEMPORARY TRACKAGE RIGHTS—  
NORFOLK SOUTHERN RAILWAY COMPANY

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VERIFIED NOTICE OF EXEMPTION

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CSX Transportation, Inc. ("CSXT") submits this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(8) for overhead temporary trackage rights over certain rail lines operated by the Norfolk Southern Railway Company ("NSR") generally between CSXT's connection to NSR's tracks at Decpwater, WV, Milepost V434.1 located on the Vaco Branch, via Alloy, WV east to the connection with the Vaughn Railroad Company (the "Vaughn Railroad") at Milepost WV227.6, including all necessary tracks designed for the purposes of movement by NSR's operating officer, including head and tail room as necessary, (the "NSR Line"). The temporary trackage rights cover a total distance of approximately 12.3 miles.

The temporary trackage rights will permit CSXT to resume overhead rail service to reach the Fola Coal Mine at Bickmore, WV. The Gauley Creek Bridge at milepost CAY 0.3 is part of the CSXT line that is used to reach the Fola Coal Mine. CSXT does not have an alternate route over its own lines.

The bridge was originally built in 1892 and is composed of six open deck spans oriented west to east over the New River. Spans 1 to 3 are deck plate girders on curved alignment. Spans 4 to 6 are pinned deck trusses on tangent alignment with approximate span lengths of 101 feet,

154 feet, and 101 feet.

On September 23, 2010 a CSXT Bridge Inspector discovered a critical defect that required the bridge to be taken out of service. The south truss bottom chord of Span 6 was broken on both side connection plates at the southwest bearing pin connection (fixed bearing). HDR Engineering, Inc. met with CSXT Bridge Personnel to perform a detailed inspection and assessment of the damage. In addition to the bottom chord failure, they identified collateral damage to other truss members. The south truss was bowed with one diagonal member bent at the upper chord connection. The bottom lateral system connection plates were bowed at multiple locations. The broken bottom chord elements had also separated and pulled away from the pin connection. The distance between the bottom chord end pins had spread.

CSXT Bridge Staff and HDR Engineering, Inc. jointly concluded that the bridge had broken in such a way that it could not be repaired. The only safe course of action was to take the bridge out of service until it could be replaced. Because the bridge must be replaced and the winter weather in the mountains of West Virginia, CSXT estimates that it will take until July 1, 2011 to repair the Gauley Creek Bridge and return it to service.

Since September, CSXT has been serving the Fola Coal Mine under a Detour Agreement with NSR. The agreement has terminated and NSR desires traffic to move under a temporary trackage rights agreement. To meet NSR's requirements, the parties have entered a written agreement for the temporary 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 temporary trackage rights from NSR between CSXT's connection to NSR's tracks at Deepwater, WV, Milepost V434.1 located on the Vaco Branch, via Alloy, WV east to the connection with the Vaughn Railroad at Milepost WV227.6, including all necessary tracks designed for the purposes of movement by NSR's operating officer, including head and tail room as necessary, a total distance of 12.3 miles.

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

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

Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510

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  
600 Baltimore Avenue, Suite 301  
Towson, MD 21204  
(410) 296-2250  
Lou@lgraillaw.com

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

CSXT has today filed a Petition for Waiver of the requirement that “[t]o qualify for an exemption under § 1180.2(d), a railroad must file a verified notice of the transaction with the Board at least 30 days before the transaction is consummated indicating the proposed consummation date.” Should the STB grant the requested Petition for Waiver, the parties intend to consummate the transaction on or shortly after January 16, 2011 or on the earliest date that the Board grants the waiver, when the Fola Coal mine plans to run a unit coal train. Should the Board deny the requested Petition for Waiver, the parties intend to consummate the transaction on or shortly after February 13, 2011.

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

CSXT is seeking to use the NSR Line to restore CSXT service to the Fola Coal Mine that was disrupted when the CSXT bridge over Gauley Creek, WV was taken out of service after a regular inspection revealed a broken truss and to replace the terminated detour agreement. CSXT has arranged for temporary overhead trackage rights with NSR while it replaces the Gauley Creek Bridge. CSXT expects to be able to complete the replacement of the Gauley Creek Bridge by July 1, 2011, the expiration date of the temporary trackage rights over the NS Line.

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

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

Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.

The overhead temporary trackage rights are located in the State of West Virginia.

**(a)(6) Map**

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

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

A copy of the draft trackage rights agreement is attached as Exhibit B.

**Labor Protection**

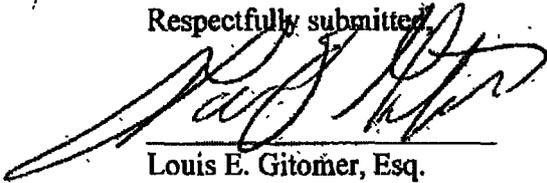
Any employees who are adversely affected by the acquisition of the temporary overhead trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in *Norfolk and Western Railway Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino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

Any employees who are adversely affected by the discontinuance of these temporary overhead trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

**Environmental and Historic Matters**

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

Respectfully submitted,



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

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

Attorneys for: CSX Transportation, Inc.

Dated: January 14, 2011

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35460

CSX TRANSPORTATION, INC.  
—TEMPORARY TRACKAGE RIGHTS—  
NORFOLK SOUTHERN RAILWAY COMPANY

Norfolk Southern Railway Company (“NSR”) has agreed to grant overhead temporary trackage rights to CSX Transportation, Inc. (“CSXT”) between CSXT’s connection to NSR’s tracks at Deepwater, WV, Milepost V434.1 located on the Vaco Branch, via Alloy, WV east to the connection with the Vaughn Railroad Company (the “Vaughn Railroad”) at Milepost WV227.6, including all necessary tracks designed for the purposes of movement by NSR’s operating officer, including head and tail room as necessary (the “NSR Line”), a total distance of 12.3 miles. The temporary trackage rights will be effective on January 16, 2011, and will expire on July 1, 2011.

As a condition to this exemption, any employee affected by the acquisition of the temporary 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), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR §1180.2(d)(8). 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. 35460, 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.

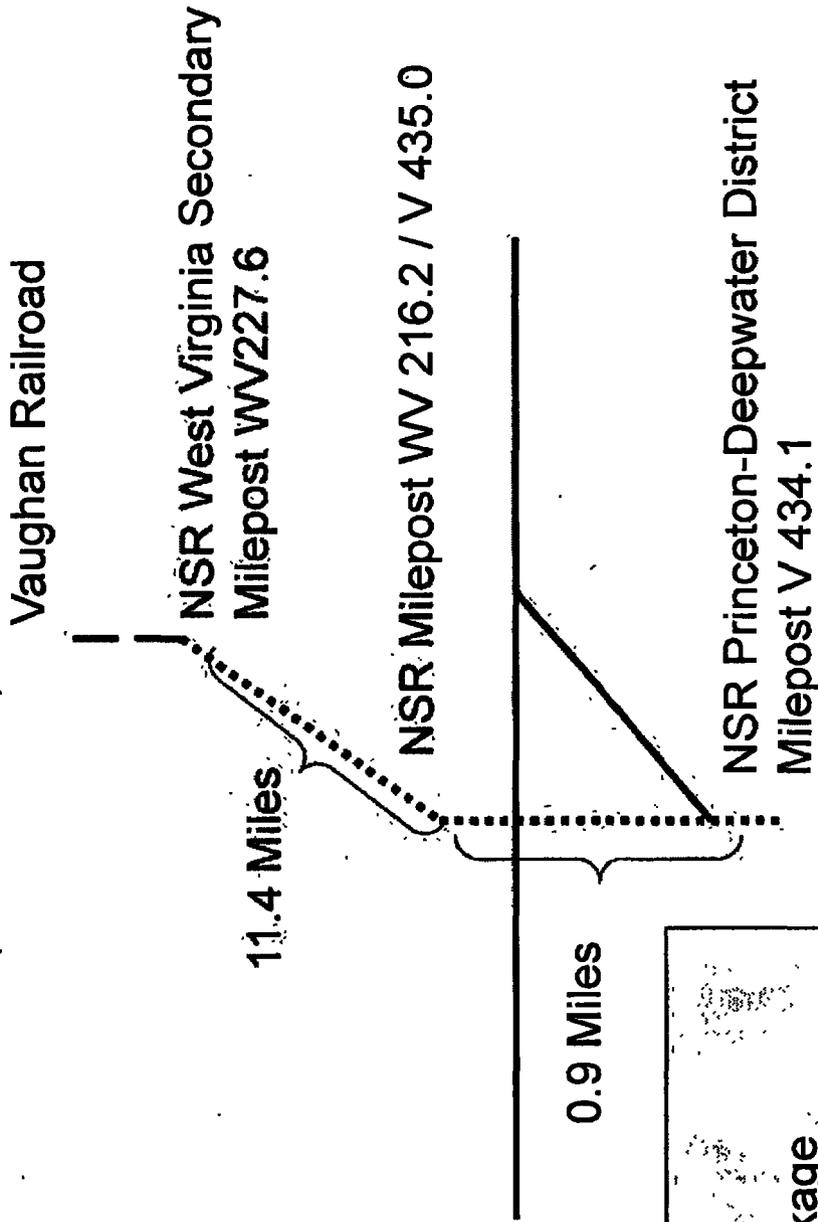
Board decisions and notices are available on our website at “[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).”

Decided: January --, 2011.

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

# **EXHIBIT A-MAP**

Appendix A  
Subject Trackage in Deepwater, WV  
(Not to Scale)



Date January 12, 2011

Legend:

- CSX Trackage
- ..... Subject NSR Trackage
- - - CSX Trackage

# **EXHIBIT B-AGREEMENT**

**TEMPORARY TRACKAGE RIGHTS AGREEMENT  
VACO JUNCTION, WV TO BICKMORE, WV  
JANUARY 16, 2011 THROUGH JULY 1, 2011**

**THIS AGREEMENT**, entered into as of this 16th day of January, 2011 between **NORFOLK SOUTHERN RAILWAY COMPANY**, (hereinafter referred to as "NSR"), and **CSX TRANSPORTATION COMPANY** (hereinafter referred to as "CSXT"),

**WITNESSTH;**

**WHEREAS**, NSR owns and operates certain trackage in the Deepwater, West Virginia area and certain trackage connecting and making connections with routes of CSXT; and

**WHEREAS**, CSXT desires to obtain temporary overhead trackage rights upon certain lines of NSR's railroad, for the sole purpose of bridging its unit coal trains. This request is necessitated by the outage of CSXT's Gauley Bridge; and

**WHEREAS**, NSR and CSXT have agreed to enter into this **TEMPORARY TRACKAGE RIGHTS AGREEMENT** (hereinafter referred to as "**TEMPORARY TRACKAGE**") for the purpose of defining the conditions under which CSXT may utilize the tracks and facilities of NSR;

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

**SECTION 1. GRANT OF TEMPORARY TRACKAGE RIGHTS:**

CSXT and NSR agree that CSXT's use of the **TEMPORARY TRACKAGE** granted herein by NSR shall be for movement, in both directions, of loaded and empty unit coal trains originating from and destined to Consol's Fola Mine located at Bickmore, WV. Said grant of rights shall be between CSXT's connection to NSR's tracks at Deepwater, WV, Milepost V434.1 located on the Vaco Branch via Alloy, WV east to the connection with the Vaughn Railroad at Milepost WV227.6, including all necessary tracks designed for the purposes of movement by NSR's operating officer, including head and tail room as necessary, a total distance of twelve and one third (12.3) miles for the period of January 16, 2011 through July 1, 2011 as described in Appendix A- Subject Trackage in Deepwater, WV.

**SECTION 2. RESTRICTION ON USE:**

(a) Such rights shall be limited to the operation by CSXT of CSXT's loaded and empty unit coal trains originating from and destined to Consol's Fola mine located at Bickmore, WV. This Temporary Trackage will be limited to two (2) round trip unit coal trains per week only during such time as NSR provides pilots for qualification purposes.

(b) CSXT shall not use Temporary Trackage for any other purpose whatsoever. CSXT can not use Temporary Trackage to interchange CSXT traffic with any other carrier, except for the Vaughn Railroad, as described in Section 1.

(c) Any interchange of loaded and empty freight cars between CSXT and Vaughn Railroad shall not be accomplished on the tracks of NSR. It is understood and agreed that CSXT's trains utilizing Temporary Trackage may be operated by CSXT's crews only.

**SECTION 3 USE OF TEMPORARY TRACKAGE RIGHTS**

(a) CSXT's use of NSR's Trackage shall at all times be governed by the designated transportation operating officer in charge (*hereinafter referred to as "NSR's Designated Representative"*).

(b) Trackage to be used by CSXT shall be designated by the aforesaid NSR Designated Representative at the time of movement. It shall be the responsibility of CSXT to make such track use arrangements with NSR as will not cause unreasonable interruption to NSR's operations. The NSR's Designated Representative shall make track use arrangements with the CSXT that will not cause unreasonable interruptions to CSXT's operation.

(c) Procedures for qualification and occupancy of the Temporary Trackage will be arranged by local supervision of each carrier. CSXT's operation over the Temporary Trackage shall at all times be subject to the direction and control of the NSR Designated Representative in charge of the Temporary Trackage and to applicable provisions of NSR's safety and operating rules.

(d) NSR shall have exclusive control of the management and operation of NSR's trackage. CSXT's use of the NSR's trackage shall be in common with NSR and any other user of NSR's trackage, and NSR's right to use NSR's trackage shall not be diminished by this Agreement. NSR shall retain the exclusive right to grant to other persons rights of any nature on the NSR's Trackage. .

**SECTION 4. COMPENSATION:**

(a) CSXT shall pay NSR a sum of Eighteen dollars (\$18.00) per train mile hereinafter called "Current Charge".

(b) CSXT will furnish to NSR, in care of Manager Miscellaneous Billing - Roanoke, VA or their designates, at the end of each month, a statement of the number of trains operated over the Temporary Trackage during the month. Based on this statement, NSR will render to CSXT a bill, computed in accordance with the provisions of this Section 4, for CSXT's use of the Temporary Trackage.

**SECTION 5. REVISION OF CURRENT CHARGE:**

INTENTIONALLY OMMITED

**SECTION 6. TERM AND TERMINATION:**

(a) This Agreement shall become effective as of the date first above written and will expire at 11:59PM, July 1, 2011.

(b) Termination of this Agreement shall not relieve or release any party hereto from any obligations assumed hereunder or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to termination hereof.

**SECTION 7. MISCELLANEOUS SPECIAL PROVISIONS**

(a) When operating over NSR's Trackage, CSXT's locomotives and crews will be equipped to communicate with NSR on radio frequencies normally used by NSR in directing train movements on NSR's trackage.

(b) Before its locomotives enter onto NSR's trackage, CSXT shall request permission from NSR's Designated Representative. Further, CSXT shall ascertain that said trackage is clear

and shall await confirmation from NSR's Designated Representative that such permission has been issued to allow CSXT's movements on or over NSR's trackage. Upon completing its operations and clearing NSR's trackage, CSXT will notify NSR's Designated Representative that it has completed its operations and that its equipment has cleared NSR's trackage. Once CSXT has notified NSR's Designated Representative that it has cleared NSR's trackage, CSXT shall not reenter NSR's trackage without again obtaining permission from NSR's Designated Representative. CSXT shall provide and maintain at its expense all communication facilities needed and as may be required by NSR to permit CSXT to use NSR's Trackage.

#### **SECTION 8. PAYMENT OF BILLS**

(a) All payments called for under this Agreement shall be made by CSXT within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

(b) 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 billing.

(c) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by NSR for CSXT.

#### **SECTION 9. MAINTENANCE OF NSR's TRACKAGE**

(a) NSR shall maintain, repair and renew NSR's trackage with its own supervision and labor. NSR shall keep and maintain NSR's trackage in reasonably good condition for the use herein contemplated, and in accordance with the requirements of any governmental agency having jurisdiction, but NSR does not guarantee the condition of NSR's trackage or that operations there over will not be interrupted. NSR shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, CSXT shall not by reason of failure or neglect on the part of NSR to maintain, repair or renew NSR's trackage, have or make any claim or demand against NSR or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any

damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by CSXT resulting from any such failure or neglect.

(b) NSR shall perform, at the expense of CSXT, such additional maintenance as CSXT may reasonably require or request.

#### **SECTION 10. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS**

(a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices 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 or practices.

(b) Any additional connections or rehab to the Temporary Trackage which may be required shall be subject to the NSR's approval and provided for under separate agreement.

#### **SECTION 11. ADDITIONS, RETIREMENTS AND ALTERATIONS**

INTENTIONALLY OMITTED

#### **SECTION 12. MANAGEMENT AND OPERATIONS**

(a) CSXT shall comply with any federal and state and local governmental laws, regulations and rules applicable to the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over NSR's trackage. CSXT shall indemnify, protect, defend, and save harmless NSR 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 NSR or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of CSXT to comply with its obligations in this regard.

(b) CSXT in its use of the NSR's Trackage shall comply in all respects with the safety rules, operating rules and other regulations of NSR, and the movement of CSXT's trains, locomotives, cars, and equipment over NSR's Trackage shall at all times be subject to the orders

of NSR's Designated Representative. CSXT's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of NSR's Trackage.

(c) CSXT shall make such arrangements with NSR as may be required to have all of its employees and its contractor's employees who shall operate CSXT's trains, locomotives, cars and equipment over NSR's Trackage qualified for operation thereover, and CSXT shall pay to NSR, upon receipt of bills therefor, any cost incurred by NSR in connection with the qualification of such employees of CSXT, as well as the cost of pilots furnished by NSR, until such time as such employees are deemed by the appropriate examining officer of NSR to be properly qualified for operation as herein contemplated.

(d) NSR shall have the right to exclude from NSR's trackage any employee of CSXT or its contractor to be in violation of NSR's rules, regulations, orders, practices, or instructions issued by NSR's Timetable or otherwise issued, provided the same had been previously communicated to CSXT. CSXT shall release, indemnify, defend, and save harmless NSR 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.

(e) The trains, locomotives, cars and equipment of CSXT, NSR, and any other present or future CSXT of NSR's 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 manner of movement of all traffic.

(f) In the event that NSR requests CSXT to remove its switch engine or cars from NSR's trackage due to a need for NSR for the use of such trackage, and CSXT is unable to remove its engine or cars from the NSR trackage due to accident, breakdown or other inability, NSR 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 NSR's trackage, and CSXT shall reimburse NSR for the cost of rendering any such assistance.

(g) 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 NSR's trackage, each party is to be notified

and CSXT shall be given the opportunity to perform such work. CSXT understands and agrees that if the work is not done to the satisfaction of NSR, NSR shall perform the work and CSXT shall reimburse NSR for the cost thereof.

(h) In the event NSR and CSXT agree that NSR should retain employees or provide additional employees for the sole benefit of CSXT, the parties hereto shall enter into a separate agreement under which CSXT shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by NSR and which would not have been incurred had the retained or additional employees not been provided.

### **SECTION 13. MILEAGE AND CAR HIRE**

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

### **SECTION 14. CLEARING OF WRECKS**

Whenever CSXT's use of NSR's trackage requires rcrailing, wrecking service or wrecking train service, NSR 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 borne by CSXT except where the same is caused by the sole negligence or wrongful act of NSR.

### **SECTION 15. LIABILITY**

The responsibility of the parties hereto as among themselves for loss of, damage to, or destruction of any property whatsoever, 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 resulting from, arising out of, incidental to, or occurring in connection with this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, 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 the trains, locomotives, cars, or equipment of, or in the account of, one party hereto being involved, without the trains, locomotives, cars or equipment of, or in the account of, the other party hereto being involved, such involved party shall assume all liability therefor and bear all cost and expense in connection therewith and shall forever protect, defend, indemnify, and hold harmless the other party hereto, its parent and subsidiaries, and each of their respective directors, officers, agents, and employees from and against any such liability, cost and expense.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, 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 the trains, locomotives, cars or equipment of, or in the account of, both NSR and CSXT being involved, each shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their respective directors, officers, agents, and employees (including sole employees), and persons in each of their care and custody. All liability, cost, and expense for injury to and death of any other person or persons whomsoever, and for loss of, damage to, and destruction of all other property (including without limitation the Temporary Trackage) so occurring shall be borne equally by such parties involved.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, 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 without the trains, locomotives, cars, or equipment of, or in the account of, any party hereto being involved, or if it cannot be determined which party's or parties' trains, locomotives, cars or equipment are involved, each party hereto shall separately assume and bear all liability, cost, and expense for injury to and death of each of their directors, officers, agents, and employees (including sole employees), and persons in each of their care and custody, and all liability, cost, and expense for injury to and death of any other person or persons whomsoever, and for loss of, damage to, and destruction of all other property (including without limitation the Temporary Trackage) so occurring shall be borne equally by the parties hereto.

(d) Notwithstanding anything to the contrary in Sections 15(a), (b) and (c), above, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, occurs with one or more trains of both NSR and CSXT being involved, then, as between themselves, NSR and CSXT agree that (i) NSR shall be solely responsible for any damage or destruction

to the environment and to third parties which results solely from a substance transported in NSR equipment from which there was a release, (ii) CSXT shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in CSXT equipment from which there was a release, and (iii) NSR and CSXT shall be responsible, in proportion to the total number of pieces of NSR equipment and CSXT equipment from which there was a release, for any damage or destruction to the environment and to third parties which results solely from one or more substances transported in both NSR equipment and CSXT equipment from which there was a release.

(e) 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 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, malfeasance or misfeasance of the indemnified party or its directors, officers, agents or employees.

(f) The parties hereto agree that each and all of its indemnity commitments in this Agreement in favor of the other party hereto shall also extend to and indemnify their respective parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees.

(g) In every case of death or injury suffered by an employee of a party hereto, 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 a party 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.

(h) If any employee of CSXT shall neglect, refuse or fail to abide by NSR's rules, instructions and restrictions governing the operation on or along the Temporary Trackage, such employee shall upon written request of NSR, be prohibited by CSXT from working on the Temporary Trackage. If any party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of CSXT, then upon such notice presented in writing, CSXT shall promptly hold an investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigations to a CSXT employee shall be given by CSXT officers, and such investigation shall be conducted in accordance with

the terms and conditions of schedule agreements between CSXT and its employees. If the result of such investigation warrants, such employee shall, upon written request by NSR, be withdrawn by CSXT from service on NSR's property and CSXT shall release and indemnify NSR from and against any and all claims and expenses because of such withdrawal.

(i) Each party shall assume and bear all responsibility for such loss, damage, injury and death caused by acts or omissions of any of its employees while under the influence of drugs or alcohol and Section 11(a), (b) and (c) shall not apply.

(j) For the purposes of assigning responsibility for Loss or Damage under this Section 15 as between the Parties hereto, the trains, cars and equipment of a railroad other than NSR and CSXT shall be considered to be the trains, cars and equipment of NSR.

#### **SECTION 16. INSURANCE**

Intentionally Omitted

#### **SECTION 17. INVESTIGATION**

(a) Except as provided in Subsection 17(b) hereof, all claims, injuries, deaths, 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 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

(c) In the event a claim or suit is asserted against NSR or CSXT which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time

employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, 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 17 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 15 hercof.

#### **SECTION 18. DEFAULT AND TERMINATION.**

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

#### **SECTION 19. REGULATORY APPROVAL**

(a) Implementation of this Agreement requires the filing of a Notice of Exemption from the prior approval and authorization requirements of the Surface Transportation Board ("STB"). CSXT, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. NSR will assist and support efforts of CSXT to obtain any such required approval and authorization or exemption. The Notice of Exemption will be filed pursuant to the temporary trackage rights regulations of the STB, as set forth in 49 CFR Part 1180. Prior to filing the Notice of Exemption, NSR must approve in writing or by electronic mail the contents of such filing. If such Notice of Exemption is not approved by NSR prior to such filing, then this Agreement will immediately terminate as of the time such

unapproved Notice of Exemption is filed and shall be null and void. Operations pursuant to this Agreement may not begin until 30 days after the Notice of Exemption is filed with the STB, or until such time as regulatory approval is granted or exempted, **and until after the expiration of the time period required by any applicable labor agreements.**

(b) Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; CSXT, solely, shall be responsible for any and all payments in satisfaction of such conditions.

#### **SECTION 20. ABANDONMENT OF NSR'S TRACKAGE**

Notwithstanding the provisions of Section 21 of this Agreement, NSR may abandon the Temporary Trackage during the term of this Agreement, or any renewals hereof, upon giving CSXT not less than ninety (90) days' written notice of NSR's intent to abandon. In the event regulatory authority is required to effect such abandonment, CSXT will not interfere with NSR's actions to seek and to exercise such authority. In the event regulatory authority is required for CSXT to discontinue its own operations over the Temporary Trackage, CSXT will seek and diligently pursue such regulatory authority at the same time that NSR seeks regulatory authority to abandon the Temporary Trackage, or as soon thereafter as CSXT may do so in accordance with applicable statutes and regulations, unless CSXT intends to acquire the Temporary Trackage from NSR pursuant to 49 U.S.C. Section 10904 or other similar provision. CSXT hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Temporary Trackage. Unless CSXT or another party acquires the Temporary Trackage for continued rail use or subsidizes NSR's operations thereon, CSXT shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by NSR for abandonment of the Temporary Trackage by its aforesaid notice to CSXT, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of CSXT's operations is not required, CSXT shall discontinue its operations hereunder on the date that NSR is authorized to abandon the Temporary Trackage. Upon discontinuance of CSXT's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein,

Temporary Trackage means the entire Temporary Trackage or any portion or portions thereof

**SECTION 21. ARBITRATION**

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration before three (3) arbitrators and administered by the American Arbitration Association ("AAA") under its then current Commercial Arbitration Rules. Where such rules conflict with the provisions of this Agreement, however, the provisions hereof shall govern. Either party shall have the right to request arbitration by giving written notice to the other party and to any regional office of the American Arbitration. The regional office of the AAA promptly shall send simultaneously to each party in the dispute an identical list of names of NSR less than eight (8) persons chosen from its panel of arbitrators. Each party to the dispute shall have fourteen (14) days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. Each party may strike five (5) names on the submitted list on a peremptory basis. If a party does not return the list within the time specified, all persons named thereon shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of arbitrators to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without submissions of additional lists. The decision of the majority of the three- (3) arbitrators shall be final and binding on the parties as to such matters that are submitted to and determined by the arbitrators, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Unless otherwise agreed, arbitration shall take place in Atlanta, Georgia. The reasonable compensation of the arbitrators and the cost of the arbitration shall be shared equally by the parties to this Agreement.

The parties acknowledge that the subject of this Agreement is a transaction involving interstate commerce, and that the enforceability of this provision is governed by the Federal Arbitration Act, 9 U.S.C. Section 1 et seq.

**SECTION 22. SUCCESSORS AND ASSIGNS**

INTENTIONALLY OMMITED

**SECTION 23. 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 CSXT:           Senior Vice President Transportation  
                          CSX Transportation Company  
                          500 Water Street  
                          Jacksonville, FL 32202

If to NSR:               Vice President-Transportation  
                          Norfolk Southern Railway Company  
                          Three Commercial Place  
                          Norfolk, VA 23510-2191

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

**SECTION 24. 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 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 among 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 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 the 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) No party hereto may disclose the provisions of this Agreement to an outside 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. Provided, however, that CSXT may disclose the provisions of this Agreement to any contractor performing any of CSXT's obligations hereunder.

#### **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 and affiliates of such other parties, and all of their respective directors, officers, agents and employees.

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

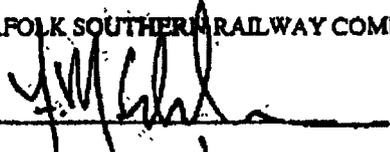
WITNESS:



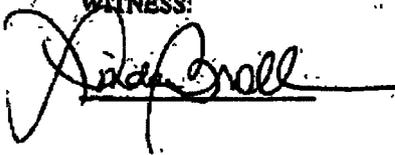
NORFOLK SOUTHERN RAILWAY COMPANY

By:

(Title)

  
VP-Customer Service

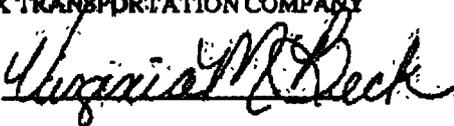
WITNESS:



CSX TRANSPORTATION COMPANY

By:

(Title)

  
Director Passenger & Joint Facility Contracts

**VERIFICATION**

State of Florida            )  
  )ss:  
County of Duval            )

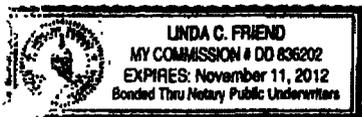
I, Virginia Beck, being duly sworn, depose and state that I am Director Passenger and Joint Facility Agreements of CSX Transportation, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted therein are true and accurate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

  
Virginia Beck

Subscribed and sworn to before me this 14<sup>th</sup> day of January 2011.

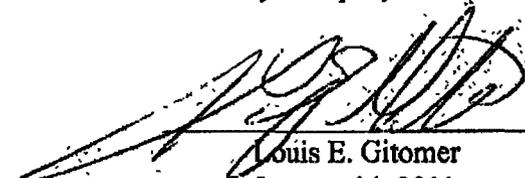
  
Notary Public

My Commission expires: 11-11-2012



CERTIFICATE OF SERVICE

I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket 35460, *CSX Transportation, Inc.—Temporary Trackage Rights—Norfolk Southern Railway Company*, 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, the Governor, Public Service Commission, and Department of Transportation of the State of West Virginia, and the Norfolk Southern Railway Company.



Louis E. Gitomer  
January 14, 2011