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October 6, 2023

ENTERED
Office of Proceedings
October 6, 2023
Part of
Public Record

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

RE: Docket No. FD 36730, *CSX Transportation, Inc.—Trackage Rights Exemption-
Kansas City Southern Railway Company*

Dear Ms. Brown:

Enclosed for efilng are Public and Highly Confidential versions of a Verified Notice of Exemption under 49 CFR 1180.2(d)(7). The filing fee of \$1,500 has been paid by pay.gov.

Parties required to be served are receiving a copy of the public version of the Notice and Agreement. Confidential versions will be provided upon submission of the undertakings required by the concurrently filed Motion for Protective Order.

If you have any questions, please contact me.

FILED

Sincerely yours,

October 6, 2023
SURFACE
TRANSPORTATION BOARD

/s/ *Louis E. Gitomer*

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

FEE RECEIVED

October 6, 2023
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36730

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—
KANSAS CITY SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

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Attorneys for: CSX Transportation, Inc.

Dated: October 6, 2023

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36730

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—
KANSAS CITY SOUTHERN RAILWAY COMPANY

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 Kansas City Southern Railway Company (“KCS”) between milepost 50.4 and milepost 48.4, a distance of approximately 2.0 miles. The trackage rights are related to the acquisition by CSXT of the MNBR line between Burkeville and Myrtlewood, AL and will allow CSXT to access a point on KCS in order to interchange traffic with Alabama & Gulf Coast Railway LLC (“AGR”) and Meridian & Bigbee Railroad, L.L.C. (“MNBR”) on the KCS line in Myrtlewood, AL. 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 KCS between milepost 50.4 and milepost 48.4, a distance of approximately 2.0 miles.

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

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

Kansas City Southern Railway Company
7550 Ogden Dale Road S.E.
Calgary, AB T2C 4X9
Canada

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@lgraillaw.com

(a)(1)(ii) Consummation Date

The transaction is scheduled to be consummated on or shortly after CSXT acquires the line between Burkeville and Myrtlewood, AL from MNBR pursuant to the application filed in Docket No. FD 36727, *CSX Transportation, Inc.—Acquisition and Operation—Rail Line of Meridian & Bigbee Railroad, L.L.C.* on October 6, 2023.

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

CSXT will use the trackage rights to conduct a portion of the interchange of traffic to and from AGR and MNBR on KCS in Myrtlewood, AL.

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

CSXT owns and operates rail lines in the States of Alabama, Connecticut, Delaware,

Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, and West Virginia, the District of Columbia, and the Canadian Provinces of Ontario and Québec.

The overhead trackage rights are located in the State of Alabama.

(a)(6) Map

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

(a)(7)(ii) Agreement

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

Labor Protection

Any employees 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—Cal. W. R.R.*, 360 I.C.C. 653 (1980).

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,

/s/ *Louis E. Gitomer*

John P. Patelli
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(410) 296-2250

Attorneys for: CSX Transportation, Inc.

Dated: October 6, 2023

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36730

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—
KANSAS CITY SOUTHERN RAILWAY COMPANY

The Kansas City Southern Railway Company will agree to grant overhead trackage rights to CSX Transportation, Inc. between milepost 50.4 and milepost 48.4, a distance of approximately 2.0 miles, near Myrtlewood, AL. The overhead trackage rights will be effective on or shortly after CSXT acquires the line between Burkeville and Myrtlewood, AL from MNBR pursuant to the application filed in Docket No. FD 36727, *CSX Transportation, Inc.—Acquisition and Operation—Rail Line of Meridian & Bigbee Railroad, L.L.C.* on October 6, 2023.

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).

The transaction may be consummated on or after _____, the effective date of the _____. If the verified notice 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 effectiveness of the exemption. Petitions for stay must be filed no later than _____ (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36730, must be filed with the Surface

Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Applicants' representatives, 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@lgrailaw.com.

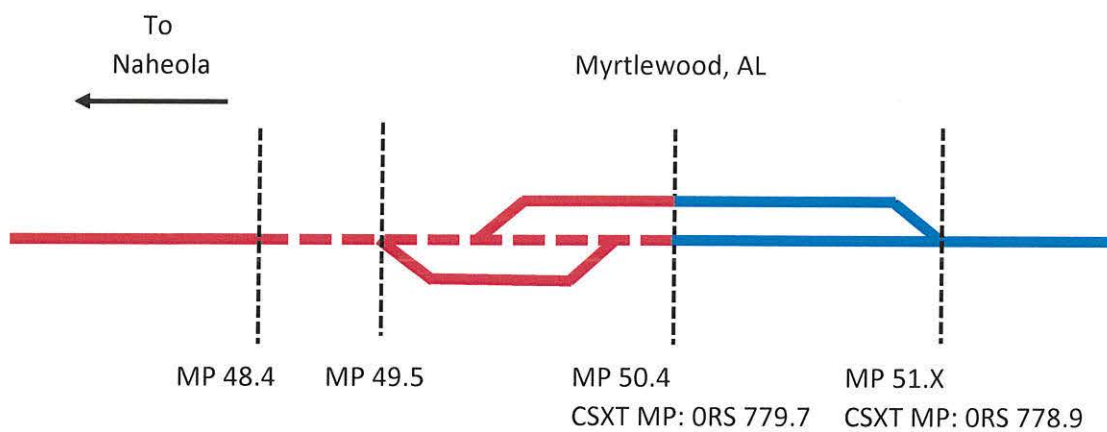
According to Applicants, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic preservation reporting requirements under 49 C.F.R. § 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided:

By the Board, Mai T. Dinh, Director, Office of Proceedings.

EXHIBIT A-MAP



Legend	
CSXT Ownership	
CPKC Ownership	
CSXT Trackage Rights Over CPKC	

EXHIBIT B-AGREEMENT

TRACKAGE RIGHTS AGREEMENT BETWEEN CPKC AND CSXT

THIS TRACKAGE RIGHTS AGREEMENT (the “Agreement”) is made this ___ day of _____, 2024 by and between The Kansas City Southern Railway Company, a Missouri corporation, d/b/a (“CPKC”) and CSX Transportation, Inc., a Virginia corporation (“CSXT”). CPKC and CSXT are sometimes referred to hereinafter individually as a “Party” and collectively as the “Parties.”

RECITALS:

WITNESS WHEREAS,

- A. CPKC is entering into a transaction to acquire from Meridian & Bigbee Railroad, L.L.C. (“MNBR”), MNBR’s rail line between MP 0.0+/- in Meridian, MS and MP 50.4+/- in Myrtlewood, AL (the “Western Segment”) and CSXT is entering into a transaction with MNBR to acquire from MNBR the track and retake possession of the rail line between Myrtlewood at MP 50.4+/- and Burkeville, AL (the “Eastern Segment”) (collectively the “Transactions”).
- B. Following the consummation of the Transactions, MNBR will continue to operate on the Western Segment to provide local and overhead service and the Alabama & Gulf Coast Railway LLC (“AGR”) will continue to operate on the Eastern Segment between Linden and Myrtlewood, AL pursuant to trackage rights granted by CSXT.
- C. Upon consummation of the Transactions, CSXT desires to interchange with MNBR, AGR and CPKC near Myrtlewood which will require CSXT to operate on a portion of the Western Segment.
- D. CPKC is willing to grant CSXT the use of the trackage in Myrtlewood between Milepost 50.4+/- and Milepost 48.4+/- (the “Subject Trackage”) for purposes of interchanging with MNBR and AGR at Myrtlewood, and with CPKC at Myrtlewood pursuant to a separate interchange agreement.

NOW, THEREFORE, in consideration of the following mutual promises, the Parties agree as follows:

SECTION 1. GRANT OF TRACKAGE RIGHTS

On the terms and subject to the conditions herein provided, CPKC hereby grants to CSXT the right to operate its trains, locomotives, cars and equipment with its own crews (such rights being referred to hereinafter as the “Trackage Rights”) over the following CPKC railroad line, as shown in detail on Exhibit A to this Agreement:

Between the CPKC connection with CSXT at Milepost 50.4+/- and Milepost 48.4+/-, both in or around Myrtlewood, AL.

SECTION 2. USE OF SUBJECT TRACKAGE

(a) Subject to the terms and conditions herein provided, CSXT shall have non-exclusive Trackage Rights to operate its Trains with its own crews over the Subject Trackage to interchange with, and handle freight rail traffic to and from MNBR and AGR, both at or near Myrtlewood, AL. CSXT's use of the Subject Trackage shall be in common with CPKC and any other railroad that CPKC admits, and neither CPKC's right, nor those of its admittees, to use the Subject Trackage shall be diminished by this Agreement.

(b) CSXT may operate trains in either direction over the Subject Trackage.

(c) In the event that CPKC implements Positive Train Control on the Western Segment, CSXT locomotives and crews operating over the Subject Trackage shall be PTC-enabled and equipped to communicate with CPKC on radio frequencies normally used by CPKC in directing train movements on the Subject Trackage.

(d) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. CSXT's operations over the Subject Trackage shall at all times be subject to the direction and control of the CPKC operating officer in charge of the Subject Trackage and the applicable provisions of CPKC's operating rules and Section 9 herein.

(e) Before a CSXT train enters the Subject Trackage, CSXT shall confirm to CPKC that the crew operating such CSXT train has the ability to make a complete round trip over the Subject Trackage.

SECTION 3. RESTRICTIONS ON USE

(a) The Trackage Rights are granted for the sole purpose of interchanging with MNBR and AGR.

(b) CSXT shall not perform any local freight service whatsoever at any point located on Subject Trackage.

(c) CSXT shall not interchange any traffic with any carrier other than MNBR or AGR using these Trackage Rights at any point on or along the Subject Trackage.

(d) CSXT shall not have the right to serve existing or future shippers at facilities located on or along the Subject Trackage.

(e) CSXT 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 as necessary for the handling of locomotives, cars or cabooses bad ordered en route; provided, however, that CSXT shall use such auxiliary Subject Trackage as may be designated by CPKC for such purposes.

(f) CSXT may not grant trackage rights of any nature on the Subject Trackage to other parties except to CSXT's subsidiary or affiliate companies.

(g) Notwithstanding any other provision of this Agreement to the contrary, CSXT may not permit or admit any third party to the use of all or any part of the Subject Trackage, nor may CSXT contract or make any agreement to provide haulage over the Subject Trackage of trains, locomotives, cars or cabooses of any third party which, in the normal course of business, would not be considered as the trains, locomotives, cars or cabooses of CSXT, or in any other way provide haulage service for other carriers over the Subject Trackage; provided, however, that this Section 3(g) shall not be construed to prohibit CSXT from using the locomotives, cars and cabooses of another railroad as its own in CSXT trains pursuant to a run-through agreement with any railroad, or a bona fide equipment lease.

(h) This Agreement is not intended to, and shall not operate to, grant CSXT's commercial access to, or right to serve (directly or through switching), any customer.

(i) The length of CSXT trains (including locomotives and other motive power units) operating pursuant to this Agreement shall be subject to available interchange track and operating capacity as determined by CPKC from time to time but reasonably consistent with any then applicable Interline Service Agreement or operating plan between the Parties.

(j) CSXT shall not move any dimensional loads and excess clearance rail cars over the Subject Trackage, subject to a clearance file (the "Clearance File") maintained by CPKC and published in Railway Line Clearances.

SECTION 4. SERVICE STANDARDS

(a) CSXT hereby acknowledges that CPKC makes no guarantee as to the actual transit time or slot availability for any CSXT train, and there shall be no penalty imposed on CPKC for failure to meet the anticipated transit time over any period of time, nor shall CSXT have any right to seek damages from CPKC on account of such failure. The Parties agree that this Section 4(a) addresses anticipated average transit time and Section 9(a) addresses dispatching, which are separate and distinct.

(b) CSXT shall provide the CPKC notice of the schedules for regularly scheduled CSXT trains operating over the Subject Trackage, including train annulments, and extra trains necessitated by sudden or seasonal surges in traffic volumes, as well as any proposed modifications as reasonably practicable.

SECTION 5. COMPENSATION

(a) Trackage Rights Charges.

(i) CSXT shall pay CPKC an amount of {{ }} per car operated over the Subject Trackage for the purpose of interchange with AGR or MNBR, escalated pursuant to Section 5(b) herein; provided that there will be no charge for any cars interchanged by CSXT directly with CPKC. CSXT shall not be charged for use of the Subject Trackage for interchange with CPKC.

(ii) The Trackage Rights Charges shall be adjusted upward or downward effective July 1 each year, beginning July 1, 2025, to compensate CPKC for one hundred

percent (100%) of any increase or decrease in the cost of labor and material, excluding fuel, as reflected in the final “Material prices, wage rates and supplements combined (excluding fuel)” index for the Western District (“Indices”) , included in “the AAR Railroad Cost Indexes” issued by the Association of American Railroads (“AAR”); provided, however, that the Trackage Rights Charges shall in no event be decreased to a level below those set forth in Section 5(b)(i) of this Agreement. In determining the amount (if any) of the July 1, 2025 adjustment, the calendar year ending December 31, 2024 shall be deemed the “Base Calendar Year.”

(iii) The first annual adjustment to the Trackage Rights Charges shall be computed by calculating the percentage of increase or decrease in the final index for the calendar year ending December 31, 2025, as related to the final index for the Base Calendar Year, and applying that percentage to the initial Trackage Rights Charges set forth in Section 5(b)(i). Subsequent annual adjustments will be computed by calculating the percentage of increase or decrease in the final index published for the calendar year immediately preceding the year in which the adjustment is to be applied, as related to the final index published for the Base Calendar Year, and applying that percentage to the initial Trackage Rights Charges set forth in Section 5(b)(i). By way of example, assuming “A” to be the Indices’ final index for the Base Calendar Year; “B” to be the Indices’ final index for the calendar year 2021; “C” to be the initial Trackage Rights Charges; “D” to be the percentage of increase or decrease, the adjusted Trackage Rights Charges to be applied on and after July 1, 2025 would be determined by the following formula:

$$(1) \quad (B-A) / A = D$$

$$(2) \quad (C \times D) + C = \text{adjusted Trackage Rights Charges, effective July 1, 2025.}$$

(iv) If the base for the Indices issued by the AAR is changed from the year 2024, an appropriate revision shall be made in the base (established as herein provided) for the calendar year 2024. If the AAR or any successor organization discontinues publication of the Indices, an equitable substitute for determining the annual percentage of increase or decrease shall be negotiated by the Parties.

(v) Each month, CPKC shall develop and present to CSXT an invoice (the “Use Invoice”) computed in accordance with Section 5(a) for use of the Trackage Rights. CSXT shall make payment to CPKC within forty-five (45) days after the date of such Use Invoice.

(vi) Any dispute regarding the amount of a Monthly Statement or Use Invoice shall be reconciled between the Parties, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Use Invoice. If CSXT disputes any portion of a Use Invoice, it shall nevertheless pay such Use Invoice in full (unless such dispute involves a material amount in relation to the total amount of such Use Invoice), subject to adjustment upon resolution of the dispute; provided, however, that (i) no exception to any charge in a Use Invoice shall be honored, recognized or considered if filed after the expiration of three (3) years from the date of the Use Invoice , and (ii) no invoice shall be rendered more than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of charges disputed as to amount or

liability, after the amount owed or liability therefor is established. Any claim for the adjustment of a Monthly Statement or Use Invoice shall be deemed to be waived if not made in writing within three (3) years after the date of the relevant Monthly Statement for statement adjustments and the date of the relevant Use Invoice for invoice adjustments.

(vii) CSXT and CPKC shall each have the right, at its own expense, to audit the records of the other Party pertaining to the use of the Trackage Rights under this Agreement, and any Monthly Statement, Use Invoice or other invoice issued by CSXT or CPKC, respectively, pursuant to this Agreement, at any time within three (3) years of the date of the relevant Use Invoice or other invoice (as applicable) relating to use of the Trackage Rights. All such audits shall be conducted at reasonable intervals, locations and times. Each Party agrees that, except as permitted by Section 19 of this Agreement, all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 5(b)(vii) with respect to which the Parties are in concurrence shall be reflected in a subsequent Use Invoice.

(viii) Invoices rendered pursuant to the provisions of this Agreement, other than Use Invoices and charges under Section 9(i), shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by CPKC at the time any work is performed by CPKC for CSXT, or shall include actual costs and expenses, upon mutual agreement of the Parties.

SECTION 6. MAINTENANCE OF SUBJECT TRACKAGE

(a) CPKC shall be solely responsible for the maintenance, repair and renewal of the Subject Trackage. CPKC shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, such condition not to be less than Federal Railroad Administration class specification the Subject Trackage was as of the Effective Date of this Agreement, subject to slow orders and the like, but CPKC does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. CPKC shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions. CSXT shall not by reason of failure or neglect on the part of CPKC to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CPKC 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 whatsoever, or for damage to or loss or destruction of any property whatsoever suffered by CSXT resulting from such failure or neglect.

(b) CPKC shall, in planning program maintenance of the Subject Trackage, take into account the schedule of CSXT trains on the Subject Trackage as well as CPKC trains. CPKC shall from time to time throughout the term of this Agreement advise CSXT of its schedule for planned maintenance, and any revisions to such schedule, as soon as practicable after such maintenance plan is determined or revised. CPKC shall further provide the designated officer of CSXT with seven (7) days' prior notice (or such lesser notice period as is reasonable in the circumstances) of substantial delays or line outages on the Subject Trackage due to planned maintenance.

SECTION 7. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

Existing connections or facilities, which are jointly used by the Parties hereto under existing agreements, shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.

(a) If, in the opinion of CSXT, a new or upgraded connection is required at a point of permitted entry, or, if in the opinion of CSXT, other upgrading, including but not limited to switches, power switches, signals, communications, is required for operational efficiency, then CPKC will, subject to its own operational needs, cooperate and CSXT will be responsible for funding that construction/upgrading at actual cost or a cost mutually agreed to by CSXT and CPKC. Such construction/ upgrading shall be progressed as follows:

(i) CSXT shall furnish all labor and materials and shall construct such portions of the tracks located on the right-of-way of CSXT, which connect the respective lines of the Parties.

(ii) CPKC shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way operated by CPKC, which connect the respective lines of the Parties. Upon termination of this Agreement, CPKC may at its option remove any portion of trackage and appurtenances located on right-of-way, constructed as a result of this provision, at the sole cost and expense of CSXT. CPKC will release any salvage material removed to CSXT or will credit CSXT for the current fair market value of the salvage materials.

(iii) CPKC will maintain, repair and renew the constructed/upgraded portions of the tracks located on the right of way operated by CPKC that connect the respective lines of the Parties at the sole cost and expense of CSXT.

SECTION 8. ADDITIONS, RETIREMENTS AND ALTERATIONS

(a) CPKC, from time to time and at its sole cost and expense, may make changes in, additions and betterments to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation of the Subject Trackage or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental entity 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 CSXT's operations beyond that required by CPKC to accommodate its operations, CPKC shall construct the additional or altered facilities and CSXT shall pay to CPKC the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

SECTION 9. MANAGEMENT AND OPERATIONS

(a) CPKC shall have exclusive control of the management and operation (including dispatching) of the Subject Trackage. Operation and control, including dispatching, of the Subject Trackage shall be conducted in a manner as to afford each of the Parties, and any other present or future user of the Subject Trackage (or any portion thereof) the most economical and efficient movement of its traffic over the line. For the purposes of dispatching, CSXT's and CPKC's trains of the same class shall be treated with equal priority, with the four (4) classes of trains being:

1. Intermodal and automotive
2. Regular (unit and freight trains not scheduled to set off/pick up en route)
3. Other (includes trains of non-parties to this Agreement and trains and equipment that must operate at restricted speeds, i.e., local, work, or other such equipment movements);

provided, that in the event of a conflict, the CPKC dispatcher shall be empowered to deviate from the priorities set forth herein in order to employ best practices to efficiently move all trains.

(b) CSXT shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. CSXT shall indemnify, protect, defend, and save harmless CPKC 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 CPKC 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, when attributable to the failure of CSXT to comply with its obligations in this regard.

(c) CSXT in its use of the Subject Trackage shall comply in all respects with its own safety and general conduct rules, equipment operation and train handling rules, and hazardous materials instructions except as otherwise provided by the written directions of CPKC's transportation officers, which directions shall not unjustly discriminate between the Parties and shall be applied equally to the trains of CPKC and CSXT. While using the Subject Trackage, CSXT shall comply in all respects with the operating rules, timetables, and special instructions of CPKC, and the movement of CSXT's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders and directions of the transportation officers of CP; provided, however, that such operating rules, timetables, special instructions, and orders and directions of the transportation officers of CPKC shall not unjustly discriminate between the Parties. CPKC will not make any rule or restriction applying to CSXT's trains that does not apply equally to CPKC's trains. CSXT's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage, 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 CPKC's operating rules and regulations, without the prior consent of CPKC. The Parties shall make proper

accommodation for exceptions, should that be reasonable, necessary and practicable. All CSXT trains shall be powered to permit operation at posted speeds.

(d) CSXT shall make such arrangements with CPKC 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. CPKC shall provide reasonable cooperation and assistance in the qualification of CSXT operating (train and engine) crews for service over the Subject Trackage as soon as the date such crews and CPKC personnel are available and the notice of exemption relating to the trackage rights granted herein has been filed with the Surface Transportation Board ("STB"). CSXT shall pay to CPKC, upon receipt of bills therefor, any cost incurred by CPKC in connection with the qualification of such employees of CSXT, as well as the cost of pilots furnished by CPKC until such time as such CSXT employees are deemed by the appropriate examining officer of CPKC to be properly qualified for operation as herein contemplated. CSXT supervisory personnel who have been qualified to operate over the Subject Trackage by an appropriate examining officer of CPKC may qualify other CSXT employees for operation of trains over the Subject Trackage.

(e) If any employee of CSXT shall neglect, refuse or fail to abide by the instructions and restrictions governing the operation on or along the Subject Trackage or the associated CPKC property, CPKC shall so notify CSXT. CPKC shall have the right to require CSXT promptly to withhold any CSXT employees from service over the Subject Trackage pending the results of a formal investigation of the alleged neglect, refusal or failure. After the notice is given to CSXT, CSXT and CPKC shall promptly hold a joint investigation, in which each of the Parties shall bear the expenses of its own employees and witnesses. Notice of such investigation to CSXT employees shall be given by CSXT officers. The investigation shall be conducted in accordance with any applicable 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 CPKC, be restricted by CSXT from service on the Subject Trackage, and CSXT shall release and indemnify CPKC from and against any and all claims and expenses because of such withdrawal.

(f) In the event that a CSXT train shall be forced to stop on the Subject Trackage, due to mechanical failure of CSXT's equipment or any other cause (mechanical or otherwise) not resulting from an accident or derailment, and such train is unable to proceed, or if a CSXT train fails to maintain the speed required by CPKC on the Subject Trackage, or if in emergencies, bad ordered or otherwise defective cars are set out of a CSXT train on the Subject Trackage, CPKC shall have the option to furnish motive power or such other assistance (mechanical or otherwise) 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. CSXT shall reimburse CPKC for the cost of rendering any such assistance. If it becomes necessary to make repairs to or adjust or transfer the lading of such disabled or defective cars in order to move them off the Subject Trackage, CPKC shall arrange for such work to be done, and CSXT shall reimburse CPKC for the cost thereof.

(g) Whenever CSXT's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CPKC shall arrange for the provision of such service, including the repair and restoration of roadbed, the Subject Trackage 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 11 hereof. All locomotives, cars, 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 CSXT at the time of such wreck, shall be promptly delivered to it.

(h) If any cars, cabooses, or locomotives of CSXT are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those cars, cabooses or locomotives shall, after being repaired, be picked up by CSXT. CPKC may, upon request of CSXT and at the expense of CSXT, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the AAR, furnish required labor and material to perform light repairs required to make such bad ordered equipment safe and lawful for movement, and billing for this work shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the AAR.

(i) CSXT shall not have any claim against CPKC for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by CSXT is interrupted or delayed at any time from any cause.

(j) CPKC shall make best efforts to provide the designated officer of CSXT with prompt notice of any unplanned substantial delays or line outages on the Subject Trackage, and shall promptly advise the designated officer of CSXT of the resumption of normal service on the Subject Trackage.

SECTION 10. MILEAGE AND CAR HIRE

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

SECTION 11. LIABILITY

The responsibility between the Parties hereto for loss of, damage to, and destruction of any property whatsoever and injury to and death of any person or persons whomsoever, arising out of, incidental to or occurring in connection with this Agreement, also expressly including, without limitation, all liabilities arising after the Commencement Date hereof under FELA and environmental laws but excluding consequential damages of any Party hereto (which are always borne by the Party which sustained them) and excluding claims for exemplary and punitive damages, hereinafter referred to as "Damage," shall be apportioned as follows without regard to fault or negligence:

(a) If Damage occurs involving solely the trains, locomotives and Equipment, cars in the revenue account (including lading), or employees of one of the Parties, then that Party shall be solely responsible for such Damage, even if caused partially or completely by another party (including the other Party).

(b) If Damage occurs involving the trains, locomotives and Equipment, cars in the revenue account (including lading), and employees of both CSXT and CPKC, then (i) CSXT and

CPKC each shall be solely responsible for any Damage to its own employees, locomotives and Equipment, and those cars in its own revenue account (including lading) (such cars (including lading) being referred to as "CSXT Cars" and "CPKC Cars," respectively, and collectively, the "Cars"), and (ii) the Parties shall each be responsible for 50 percent of the Damage to the Subject Trackage and associated facilities and any Damage sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Damage.

(c) For the purposes of assigning responsibility for Damage under this Section as between the Parties hereto, the trains of a third party or parties operating on the Subject Trackage shall be considered to be the trains of CPKC.

(d) Notwithstanding anything to the contrary in Sections 11(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 the Parties involved, then, as between themselves, the Parties agree that (i) CSXT shall be solely responsible for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties which results solely from a substance transported in CSXT Cars or CSXT locomotives and CSXT Equipment from which there was a release, (ii) CPKC shall be solely responsible for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties which results solely from a substance transported in CPKC Cars, or CPKC locomotives and CPKC Equipment from which there was a release, and (iii) CSXT and CPKC shall be responsible, in proportion to the total number of Cars, pieces of Equipment, and locomotives of each Party from which there was a release, for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties which results solely from one or more substances transported in both CSXT Cars, CSXT locomotives, and CSXT Equipment and CPKC Cars, CPKC locomotives, and CPKC Equipment from which there was a release.

(e) CPKC and CSXT each shall be responsible for the payment, handling, administration and disposition of all Damage for which it bears exclusive responsibility under this Section 11, and CPKC and CSXT shall have joint responsibility for the payment, handling, administration and disposition of all Damage for which they are jointly responsible under this Section 11. In assigning joint responsibility to both CPKC and CSXT, it is not intended that CPKC and CSXT will, in all instances, actually act jointly, but rather that they will agree between themselves on the most practical and efficient arrangement for handling, administering, and disposing of Damage for which they bear joint responsibility, with the objective of eliminating unnecessary duplication of effort and minimizing overall costs.

(f) Each Party covenants and agrees (i) to indemnify and save harmless the other Party from and against any payments which are the responsibility of such Party under this Agreement, and all expenses, including attorney's fees and expenses, and any other expenses of any court or regulatory proceeding, incurred by the indemnified Party in defending any claim for which the responsible Party is liable, and (ii) to defend such indemnified Party against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

(g) Notwithstanding anything to the contrary in this Section 11, whenever Damage occurs with one or more trains being involved, and one or more of the involved trains is a CSXT train, and such Damage is attributable solely to the gross negligence or willful or wanton

misconduct of only one of the Parties to this Agreement, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Damage, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Damage. The Parties agree that, for purposes of this Section 11(g), "gross negligence or willful or wanton misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness."

(h) Notwithstanding any provision of this Section 11 to the contrary, each Party shall assume and bear all responsibility for any Damage caused by acts or omissions of any its employees while under the influence of drugs or alcohol. An FRA positive test for drugs or an 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 Agreement.

(i) If any suit or action shall be brought against either Party for Damage which under the provisions of this Agreement is in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expenses and attorneys' fees incurred in such suit according to its liability assumed hereunder.

(j) For purposes of determining liability under this Section 11, pilots furnished by CPKC to CSXT pursuant to this Agreement shall be considered to be the employees of CSXT while such pilots are on board or getting on or off CSXT trains.

(k) CSXT shall indemnify and hold harmless CPKC against, any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of lawsuits, claims or grievances brought 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.

(l) Notwithstanding any provision of this Agreement to the contrary, for the purpose of this Section 11, 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 its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

(m) CSXT shall not be liable for any damages identified in this Section 11 that are caused by AGR or MNBR.

SECTION 12. CLAIMS

(a) Under no circumstances will either Party assert a claim for punitive or exemplary damages against the other Party related to the matters contemplated by this Agreement.

(b) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under Agreement shall be included as costs and expenses in applying the liability provisions of Section 11. However, each Party shall bear the salaries or wages of its full-time agents, full-time attorneys, and other full-time employees engaged directly or indirectly in such work.

(c) No Party shall settle or compromise any claim, demand, suit, or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709) 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 {{ }}.

(d) 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 applicable 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.

SECTION 13. TERM, DEFAULT AND TERMINATION

(a) This Agreement shall become effective (“Effective Date”) as of the first date executed by each of the Parties. However, CSXT operations over the Subject Trackage shall not commence until a date (the “Commencement Date”) mutually agreed in writing between CSXT and CPKC, which shall not occur until the effective date of any required STB authorization or exemption of CSXT’s trackage rights granted by this Agreement (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption).

(b) This Agreement shall remain in full force and effect until mutually terminated by the Parties. The Initial Term of this Agreement shall be ten (10) years from the Commencement Date, and shall be renewable continuously thereafter for additional periods of ten (10) years (“Additional Term(s)"). At the end of the Initial Term, either CPKC or CSXT may extend the Agreement under the then-current terms and conditions, or require renegotiation of the agreement. In either case, the notice to continue the then-current terms and conditions or to require renegotiation shall be given by CPKC or CSXT, as the case may be, by giving the other Party advance written notice at least six (6) months prior to the expiration of the then-current term. Should the Parties fail to reach agreement with regard to such perceived disparity, the concerned Party may invoke mediation or other methods of non-binding alternative dispute resolution, in which the other Party agrees to participate in good faith.

(c) [Intentionally omitted].

(d) 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. Termination of this

Agreement with respect to the Trackage Rights shall not occur until the STB has granted CSXT discontinuance authority and CSXT has consummated such discontinuance and complied with any conditions imposed by the STB. In the event of Termination CSXT will use best efforts to obtain STB discontinuance authority and to comply with any conditions imposed by the STB.

(e) In the event of any substantial failure on the part of any Party to perform its obligations provided under the terms of this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from another Party, the non-defaulting Party shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by such Party of any prior breach thereof, to file a lawsuit pursuant to Section 14 and seek damages and/or specific performance of the terms of this Agreement from the defaulting Party. In the case of a substantial default by CSXT which continues after adjudication of such default through litigation described in Section 14, CPKC may terminate this Agreement and the underlying right of movement if CSXT fails to cure such substantial default within thirty (30) days of the receipt of notice of continued default.

SECTION 14. DISPUTE RESOLUTION

(a) Any dispute arising between the Parties with respect to this Agreement shall be referred to their respective senior operating officers for resolution. In the event such officers are unable to resolve the dispute, the dispute shall be resolved through binding arbitration. Unless other procedures are agreed to by the Parties, arbitration between the Parties shall be governed by the rules and procedures set forth in this Section 14.

(b) If the Parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one Party of its desire for arbitration to the other Party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any Party (the notifying Party) may notify the other Party (the noticed Party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed Party shall appoint an arbitrator and notify the notifying Party in writing of such appointment. Should the noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the American Arbitration Association upon application by either Party after ten (10) days' written notice to the other Party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a Party, be appointed in the same manner hereto before stated.

(c) Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both Parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either Party may submit with witnesses required to be sworn, and hear arguments of counsel or others. In no event shall the arbitrator(s) have authority to award indirect, special, consequential, punitive or exemplary damages. If an arbitrator declines or fails to act, the Party (or Parties in the case of a single arbitrator) by whom the arbitrator was chosen or the American Arbitration Association, as the case may be, shall appoint another to act in the arbitrator's place.

(d) After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all Parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court in the United States of America having jurisdiction thereof and enforced as between the Parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each Party shall forthwith comply with said first decision or award immediately after receiving it.

(e) Each Party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all Parties to the arbitration.

(f) The Parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

(g) Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points (or the maximum interest allowed by applicable law, if lower), shall be applied to any and all arbitration awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. For purposes of this Section 5, the term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

SECTION 15. ABANDONMENT

(a) CPKC shall have the right, subject to securing any necessary regulatory approval or exemption, to abandon the Subject Trackage or any portion thereof (the "Abandonment Segment") during the Term of this Agreement. CPKC shall provide CSXT no less than ninety (90) days' prior notice of its intention to seek to abandon any Abandonment Segment.

(b) If CPKC elects to abandon an Abandonment Segment, CPKC shall, not less than ninety (90) days prior to any submission to the STB (or successor agency having jurisdiction over said abandonment) of an application or exemption for authority to abandon such Abandonment Segment, offer CSXT the first right to purchase the Abandonment Segment for the fair market value of such Abandonment Segment at the time of purchase, and on such other terms and conditions as are customary with respect to line sales by CPKC at the time. The fair market value shall be no less than the greater of the net liquidation value of such line or the going concern value of such line, as used and defined by the STB. CSXT shall have sixty (60) days ("Abandonment Notice Period") within which to advise CPKC that it will exercise its right to purchase ("Exercise Notice"). If the Parties are unable to agree upon the fair market value of the Abandonment Segment that CSXT wishes to purchase, either Party may refer the issue to mediation or binding arbitration before a single arbitrator who is a qualified expert on rail line value and appraisal

("ADR"). Any such arbitration shall be conducted on an expedited basis, with a selection of the arbitrator within forty-five (45) days of the initiation of arbitration, all submissions to be made by the Parties within ninety (90) days of the initiation of arbitration, and a decision to be rendered within thirty (30) days following the final submissions of the Parties.

(c) The Parties shall consummate the sale contemplated by this Section 15 within forty-five (45) days of the latest of: (a) the date of the final decision or order, should issues related to the sale proceed to ADR; (b) the execution of a purchase and sale agreement, should the Parties execute the same; and (c) the grant of authority, or exemption from the need to obtain a grant of authority, from any regulatory body having jurisdiction over the same.

(d) If CSXT elects not to purchase the Abandonment Segment, it shall so advise CPKC within the same sixty (60) day Abandonment Notice Period by delivering to CPKC a notice of waiver of right to purchase said segment ("Waiver Notice"). Failure of CSXT to provide CPKC with either an Exercise Notice or a Waiver Notice within the aforesaid sixty (60) day period shall constitute a Waiver Notice.

(e) In the event of a Waiver Notice, CSXT agrees not to object to CPKC's abandonment of the Abandonment Segment and at CPKC's cost shall promptly file such application, petition or exemption notice as may then be required to obtain regulatory authority or exemption for the discontinuance of its trackage rights over the Abandonment Segment.

(f) A Waiver Notice shall constitute a waiver by CSXT of its statutory rights, if any at the time of the abandonment, to purchase or otherwise subsidize operations over the Abandonment Segment pursuant to an offer of financial assistance or other applicable method.

SECTION 16. SUCCESSORS AND ASSIGNS

(a) This Agreement shall inure to the benefit of and be binding upon each of the parties and their respective successors and permitted assigns.

(b) CSXT may not assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, except to a parent, subsidiary, or affiliate without CPKC's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. CPKC may assign this Agreement, and any of its rights, interests or obligations hereunder without CSXT's consent.

SECTION 17. 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 CPKC:

Canadian Pacific Kansas City
Building 1
7550 Ogden Dale Road SE

Calgary, AB T2C 4X9 Canada
Attention: Chief Operating Officer

with a copy to:

Canadian Pacific Kansas City
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9
Attention: Chief Legal Officer

If to CSXT:

Director Joint Facilities
CSX Transportation, Inc.
500 Water Street, J801
Jacksonville, FL 32202

Either Party may provide changes in the above addresses to the other Party by personal service or, certified mail.

SECTION 18. FORCE MAJEURE

The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including strikes, riots, floods, accidents, Acts of God, acts of terrorism, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all reasonable measures, including providing routing over alternate rail lines to the extent practicable (subject to reimbursement for incremental costs), and granting the right to enter and exit the Subject Trackage at locations other than the End Points in the case of a necessary detour, to restore performance of its obligations in a timely manner.

SECTION 19. CONFIDENTIALITY

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the Initial Term and any Additional Terms, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential, and will not be disclosed by either Party to any person other than such Party's officers, employees, and attorneys, without the prior written approval of the other Party.

SECTION 20. 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 Party shall also extend to and indemnify the parent corporation, subsidiaries and affiliates of such other Party, and all of its directors, officers, agents and employees.

SECTION 21. REGULATORY APPROVAL

Upon execution of this Agreement by each of the Parties hereto, CSXT shall promptly file with the STB, and diligently prosecute, an appropriate notice of exemption with respect to the trackage rights granted to it herein.

SECTION 22. 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 person. Nothing herein contained shall be taken as creating or increasing any right of any other person 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 with respect to its subject matter and supersedes any and all other agreements and 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 of the Parties.

(d) Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word "including" means "without limitation", and the words "herein", "hereof" and "hereunder" refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.

(e) 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.

(f) The division of this Agreement into sections and subsections, and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references herein to sections are to sections in this Agreement.

(g) 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 moving in the trains of such Party. Whenever such locomotives, cars or equipment are owned or leased

by one Party, but are in the possession of, or are being operated in a train of the other Party, such locomotives, cars and equipment shall be considered those of that other Party in whose possession or train such locomotives, cars and equipment are located.

(h) This Agreement is the product of mutual negotiations of the Parties hereto, none of whom shall be considered the drafter for purposes of contract construction.

(i) No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

(j) If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner which produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

(k) Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between CPKC and CSXT.

(l) The interpretation and performance of this Agreement shall be governed by the substantive and procedural laws of the State of New York, without giving effect to any choice or conflict of laws provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of New York.

(m) This Agreement may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument.

[Signature page follows]

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY d/b/a CPKC

By: _____

Printed: _____

Title: _____

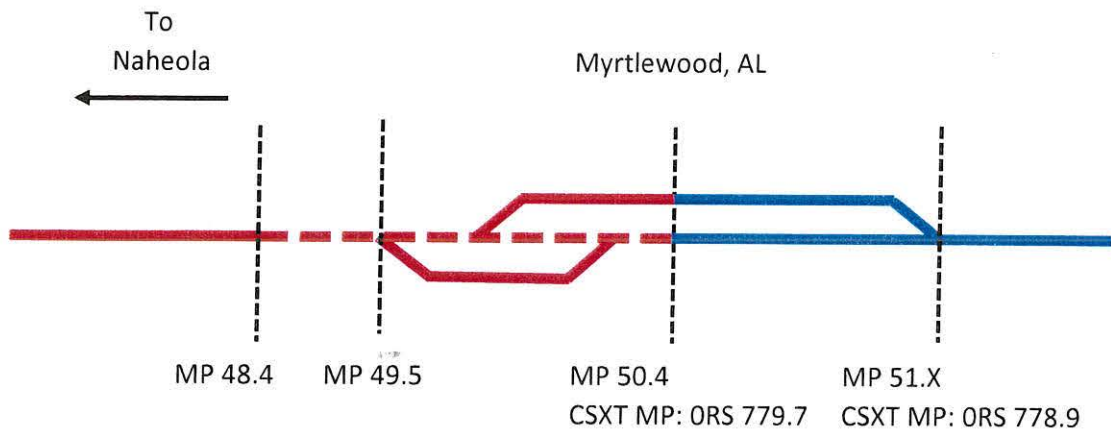
CSX TRANSPORTATION, INC.

By: _____

Printed: _____

Title: _____

EXHIBIT A



VERIFICATION

State of Florida)
)ss
County of Duval)

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


Anthony DiDeo
10/3/2023

Subscribed and sworn to before me this 3rd day of October 2023.


Notary Public

My Commission expires: April 20, 2025



JOHNNIE ELAINE GANEY
Commission # HH 119673
Expires April 20, 2025
Bonded Thru Budget Notary Services

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket 36730, *CSX Transportation, Inc.—Trackage Rights—Kansas City 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 Alabama.

/s/ *Louis E. Gitomer*

Louis E. Gitomer
October 6, 2023