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Office of Proceedings
July 18, 2019
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July 18, 2019

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

Re: Golden Isles Terminal Railroad, Inc. -
Trackage Rights Exemption -
CSX Transportation, Inc.
STB Docket No. FD 36334

Dear Ms. Brown:

Enclosed for e-filing on behalf of Golden Isles Terminal Railroad, Inc. ("GITM") is a Notice of Exemption under 49 CFR 1180.2(d)(7). The filing fee of \$1,300 was paid using Pay.gov.

Also enclosed for e-filing are a Motion of GITM for a Protective Order (expedited consideration requested), and a Highly Confidential Version of the Trackage Rights Agreement that is the subject of the Notice of Exemption.

FILED

**July 18, 2019
SURFACE**

TRANSPORTATION BOARD

FEE RECEIVED

**July 18, 2019
SURFACE**

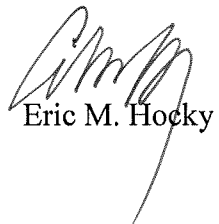
TRANSPORTATION BOARD

Cynthia T. Brown
July 18, 2019
Page 2

Please let me know if there are any questions regarding these filings. Thank you for your assistance.

Respectfully,

CLARK HILL PLC



Eric M. Hocky

EMH/e
Encls.

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36334

GOLDEN ISLES TERMINAL RAILROAD, INC.

- TRACKAGE RIGHTS EXEMPTION -

CSX TRANSPORTATION, INC.

VERIFIED NOTICE OF EXEMPTION

(contains color images)

ERIC M. HOCKY
CLARK HILL, PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500

Attorneys for
Golden Isles Terminal Railroad, Inc.

Dated: July 18, 2019

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36334

**GOLDEN ISLES TERMINAL RAILROAD, INC.
- TRACKAGE RIGHTS EXEMPTION -
CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

Golden Isles Terminal Railroad, Inc. ("GITM"), a Class III railroad, files this Verified Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(7) to exempt from the provisions of 49 U.S.C. §11323, the grant of trackage rights by CSX Transportation, Inc. ("CSXT") over the line of railroad between milepost A489± near Georgia Ports Authority Garden City Terminal and milepost S500± at or about the entrance to CSXT's Savannah Yard, plus sufficient head or tail room (i) from the north entrance to Old Savannah Yard, through Loricks Lead, out on Number One Main to milepost A492±, and (ii) from the south entrance of Old Savannah Yard, through the Blossom signal, out on Mainline to milepost S504±, in Chatham County, Georgia (the "Line"). The trackage rights are based on a written agreement between the parties, not sought in a responsive application, and are for overhead operations. Accordingly, the trackage rights covered by this Notice are exempt under 49 C.F.R. §1180.2(d)(7).

Required Information

In accordance with the provisions of 49 C.F.R. §1180.4(g), GITM provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

(a)(1)(i) GITM is being granted overhead trackage rights by CSXT to allow GITM to operate overhead intermodal trains over the line of railroad between milepost A489± near Georgia Ports Authority Garden City Terminal and milepost S500± at or about the entrance to

CSXT's Savannah Yard, plus sufficient head or tail room (i) from the north entrance to Old Savannah Yard, through Loricks Lead, out on Number One Main to milepost A492±, and (ii) from the south entrance of Old Savannah Yard, through the Blossom signal, out on Mainline to milepost S504±, in Chatham County, Georgia. The trackage rights agreement replaces a previous trackage rights agreement between CSXT to GITM that expired.¹

The name, business address and telephone number of Applicant are: Golden Isles Terminal Railroad, Inc., 13901 Sutton Park Drive South, Suite 125, Jacksonville FL 32224; (203) 202-8900.

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are: Eric M. Hocky, Clark Hill, PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

(a)(1)(ii) GITM intends to commence operations under the new trackage rights agreement on or after the effective date of this notice.

(a)(1)(iii) The trackage rights will allow GITM to bridge intermodal traffic between the Garden City Terminal and Savannah Yard for CSX Intermodal Terminals, Inc., and to provide supporting switching services.

(a)(5) GITM operates in the State of Georgia, and the Line is also located in the State of Georgia.

(a)(6) A map showing the Line is attached as Exhibit A.

¹ The trackage rights were authorized in *Golden Isles Terminal Railroad, Inc. – Trackage Rights Exemption – CSX Transportation, Inc.*, STB Finance Docket No. 34432 (served November 20, 2003). Although the trackage rights agreement expired, the trackage rights were not discontinued and by agreement of the parties, GITM continues to use the trackage rights under the terms of the expired agreement.

(a)(7)(ii) A redacted public version of the trackage rights agreement is attached as Exhibit B. (GITM is concurrently filing a Motion for a Protective Order to protect the confidentiality of the commercial terms of the trackage rights agreement. A highly confidential version of the trackage rights agreement is being filed under seal.)

Labor Protection

GITM understands that any employees adversely affected by the trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railroad*, 360 I.C.C. 653 (1980).

Environmental and Historic Reports

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

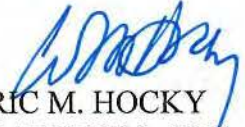
Caption Summary

Attached as Exhibit C is the caption summary required by 49 C.F.R. §1180.4(g)(2)(ii).

Conclusion

Based on the information provided above, GITM requests that the Board issue a notice of exemption for the trackage rights that are the subject of this Notice.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL, PLC
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Philadelphia, PA 19103
(215) 640-8500

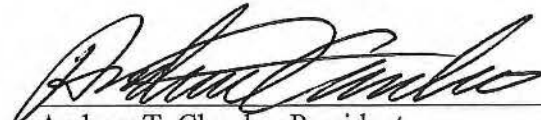
Attorneys for
Golden Isles Terminal Railroad, Inc.

Dated: July 18, 2019

VERIFICATION

I hereby verify on behalf of Golden Isles Terminal Railroad, Inc., under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on July 18, 2019.



Andrew T. Chunko, President

EXHIBIT A

MAP

Exhibit A
Subject Trackage in Savannah, Georgia
(Not to Scale)

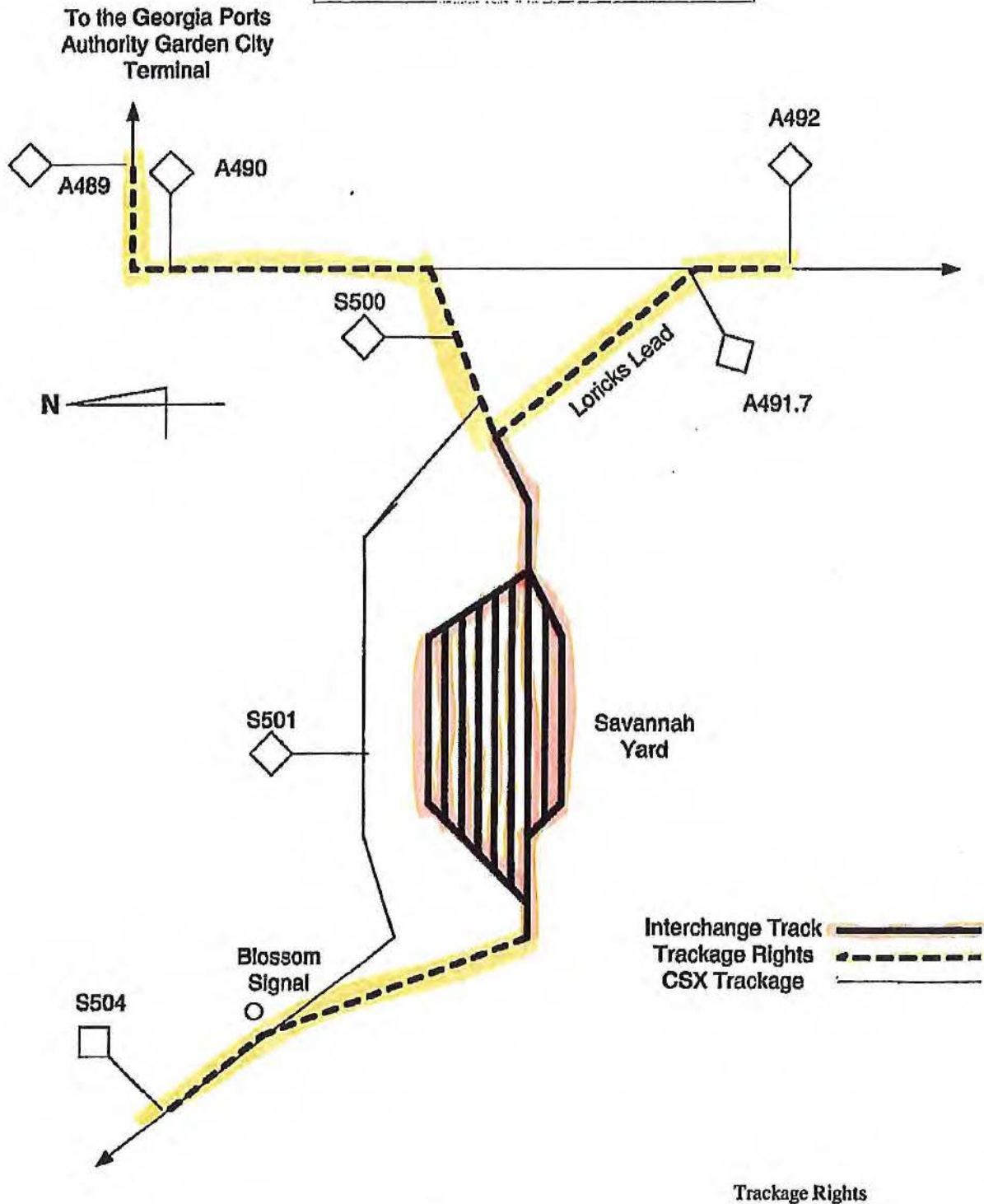


EXHIBIT B
TRACKAGE RIGHTS AGREEMENT
("PUBLIC" VERSION)

TRACKAGE RIGHTS AGREEMENT

**Between
CSX TRANSPORTATION, INC.
And
GOLDEN ISLES TERMINAL RAILROAD, INC.**

THIS AGREEMENT, entered into as of this 9th day of July 2019, by and between CSX TRANSPORTATION, INC., a Virginia corporation, (hereinafter referred to as "CSXT") and GOLDEN ISLES TERMINAL RAILROAD, INC., a Delaware corporation (hereinafter referred to as "GITM");

WITNESSETH:

WHEREAS, CSX Intermodal Terminals, Inc. (hereinafter referred to as "CSXIT") has entered into a lease, dated July 9, 2019, with CSXT of land and tracks in Savannah, Georgia (hereinafter referred to as the "Premises"); and

WHEREAS, GITM has entered into a Services Agreement with CSXIT, dated as of July 9, 2019 to perform switching and port transfer work; and

WHEREAS, GITM has requested trackage rights over CSXT's line of railroad between the Premises and the Georgia Ports Authority Garden City Terminal; and

WHEREAS, CSXT as owner is agreeable to granting such rights to GITM as user under the following terms and conditions;

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

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

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

"From at or about Milepost A489 +/- near the Port to Milepost S500+/- at or about the entrance to Savannah Yard plus sufficient head or tail room (i) from the north entrance to Old Savannah Yard, through Loricks Lead, out on Number One Main to Milepost A492+/- and (ii) from the south entrance of Old Savannah Yard, through the Blossom signal, out on Mainline to Milepost S504+/-."

ARTICLE 2. USE OF SUBJECT TRACKAGE

- A. GITM's use of the Subject Trackage shall be in common with CSXT and any other user of the Subject Trackage, and CSXT's right to use the Subject Trackage shall not be diminished by this Agreement. CSXT shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.
- B. Except as may otherwise be provided by this Agreement, GITM shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of CSXT (not to be unreasonably withheld), preclude the emergency use by GITM of such auxiliary tracks as may be designated by CSXT for such purposes.
- C. CSXT shall have exclusive control of the management and operation of the Subject Trackage. GITM shall not have any claim against CSXT for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by GITM is interrupted or delayed at any time from any cause.
- D. From time to time during the term hereof, economy and efficiency of operation may dictate the use of other than the aforesaid routes by GITM, and such alternate routes shall be at the sole discretion of CSXT's dispatcher, subject to GITM crew qualification, and when used, shall be considered part of the Subject Trackage.

ARTICLE 3. RESTRICTION ON USE

The Trackage Rights herein granted are granted for the sole purpose of GITM using same for intermodal bridge traffic only between the Port, the Premises and CSXIT's intermodal terminal adjacent to Savannah Yard, and movements in support of operations at the Premises and the CSXIT intermodal terminal. GITM shall not perform any local freight service whatsoever at any point located on the Subject Trackage.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- A. When operating over the Subject Trackage, GITM's locomotives and crews shall be equipped to communicate with CSXT on radio frequencies normally used by CSXT in directing train movements on the Subject Trackage.
- B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of CSXT's representative or his designee (not to be unreasonably withheld).

ARTICLE 5. COMPENSATION

- A. For the use it makes of the Subject Trackage, GITM shall pay CSXT annually in advance, on the effective date of this Agreement and each subsequent anniversary date until termination of this Agreement, the sum of ~~ONE HUNDRED FIFTY THOUSAND DOLLARS~~

██████████, hereinafter referred to as the "Current Charge".

- B. GITM shall furnish CSXT information concerning all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. This procedure shall be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. The carriers shall determine the minimal data requirements.
- C. The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- D. The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of July 2020 to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the AAR. In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2020 Index for the first annual adjustment) as related to the index for the previous calendar year (2019 Index for the first annual adjustment) and applying that percent to the Current Charge.
- E. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2019; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2020; "C" to be the Current Charge or Minimum Charge; and "D" to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:
- $$(1) \quad B - A / A \quad = \quad D$$
- $$(2) \quad (D \times C) + C \quad = \quad \text{revised Current Charge, effective July 1 of the year being revised.}$$
- F. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.

ARTICLE 6. PAYMENT OF BILLS

- A. All payments called for under this Agreement shall be made by GITM within thirty (30) days after receipt of bill therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.
- B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in this Article, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by CSXT at the time any work is performed by CSXT for GITM.

ARTICLE 7. MAINTENANCE OF SUBJECT TRACKAGE

- A. CSXT shall maintain, repair and renew the Subject Trackage with its own supervision and labor. CSXT shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but CSXT does not guarantee the condition of the Subject Trackage or that operations thereover shall not be interrupted. CSXT shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, GITM shall not by reason of failure or neglect on the part of CSXT to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CSXT or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by GITM resulting from any such failure or neglect.
- B. CSXT may, at the expense of GITM, perform such additional maintenance as GITM may reasonably require or request.

ARTICLE 8. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- A. Existing connections or facilities that are jointly used by the parties hereto shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- B. Any additional connections to the Subject Trackage which may be required shall be subject to the CSXT's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:

- (i). GITM or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of GITM or others which connect the respective lines of the parties hereto.
- (ii). CSXT shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of GITM such portions of the tracks located on the right-of-way of CSXT, which connect the respective lines of the parties hereto. Upon termination of this Agreement, CSXT may at its option remove the portion of such trackage and appurtenances as may be located on property of CSXT, at the sole cost and expense of GITM. The salvage material removed shall be released to GITM or, as otherwise agreed upon, CSXT shall credit GITM the current fair market value for said salvage.

ARTICLE 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

- A. CSXT, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- B. If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate GITM's operations beyond that required by CSXT to accommodate its operations, CSXT shall construct the additional or altered facilities and GITM shall pay to CSXT the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 10. MANAGEMENT AND OPERATIONS

- A. GITM shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains (locomotives and cars) while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. GITM shall indemnify, protect, defend, and save harmless CSXT and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon CSXT or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of GITM to comply with its obligations in this regard.
- B. GITM in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of CSXT, and the movement of GITM's trains

(locomotives and cars) over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CSXT. GITM's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CSXT's operating rules and regulations without the prior consent of CSXT.

- C. GITM shall make such arrangements with CSXT as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Subject Trackage qualified for operation thereover, and GITM shall pay to CSXT, upon receipt of bills therefor, any cost incurred by CSXT in connection with the qualification of such employees of GITM, as well as the cost of pilots furnished by CSXT, until such time as such employees are deemed by the appropriate examining officer of CSXT to be properly qualified for operation as herein contemplated.
- D. CSXT may conduct an investigation at its option if a GITM's employee working on CSXT's property is alleged to have violated CSXT's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, CSXT shall schedule the investigation and notify GITM's local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the GITM's employee(s) of the investigation. CSXT's scheduling of the investigation must comply with the time limits provided in the applicable labor agreement or policy on GITM's railroad. CSXT shall provide its regulations, supplements, and safety rules to GITM at no cost.
- E. If CSXT conducts an investigation, CSXT shall have the right to exclude from the Subject Trackage any employee of GITM except officers, determined by CSXT, as the result of CSXT's investigation or hearing described below, to be in violation of CSXT's rules, regulations, orders, practices or instructions.
- F. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein CSXT desires to bar GITM's employee from service on CSXT's territory pending an investigation by CSXT, immediate verbal notification shall be given to the appropriate Transportation Officer of GITM so that proper written notice can be issued to the employee.
- G. If CSXT conducts an investigation, its officer shall conduct the investigation, but an officer of GITM shall be present to assure compliance with GITM's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, CSXT shall promptly furnish GITM with two copies of the investigation hearing transcript and a recommendation as to the discipline to be assessed. GITM's Transportation Officer shall arrange to assess discipline, subject to receipt of CSXT's recommended discipline, within the applicable time limits. If CSXT recommends dismissal, GITM reserves the right to change the recommendation to the extent of barring the individual from operating over CSXT's territory.

- H. The trains, locomotives, cars and equipment of GITM, CSXT, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- I. In the event that a train of GITM shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among GITM's crew, or due to mechanical failure of GITM's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of GITM fails to maintain the speed required by CSXT on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of GITM's trains on the Subject Trackage, CSXT shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew GITM's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and GITM shall reimburse CSXT for the cost of rendering any such assistance.
- J. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by CSXT, and GITM shall reimburse CSXT for the cost thereof.
- K. In the event CSXT and GITM agree that CSXT should retain employees or provide additional employees for the sole benefit of GITM, the parties hereto shall enter into a separate agreement under which GITM shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by CSXT and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 11. MILEAGE AND CAR HIRE

Solely to the extent the cars in GITM's trains are in the car hire account of GITM, all mileage and car hire charges accruing on cars in GITM's trains on the Subject Trackage shall be assumed by GITM and reported and paid by it directly to the owner of such cars.

ARTICLE 12. CLEARING OF WRECKS

Whenever GITM's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CSXT shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 13 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by GITM at the time of such wreck, shall be promptly delivered to it.

ARTICLE 13. LIABILITY

The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgements, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either party as described herein, all of which are collectively referred to as a "Loss", shall be divided as follows:

- A. If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the parties, then the involved party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- B. If a Loss occurs on the Subject Trackage involving the trains and locomotives of both CSXT and GITM, then (i) each party is solely responsible for any Loss to its own employees, locomotives and equipment under its control including lading and (ii) the parties are equally responsible for any Loss to the Subject Trackage and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
- C. For purposes of assigning responsibility of a Loss under this Article as between the parties hereto, (i) subject to clause (ii) below, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement and (ii) except for GITM, the equipment of any third party railroad company or companies being detoured or operating over the Subject Trackage pursuant to CSXT's consent or authority, and all persons other than CSXT's employees engaged in moving such equipment, shall be considered the equipment and employees of CSXT.
- D. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- E. In every case of death or injury suffered by an employee of either GITM or CSXT, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates

upon which any such future installments are to be paid.

- F. For purposes of this Article, pilots furnished by CSXT to GITM pursuant to this Agreement shall be considered as the employees of GITM while such employees are on duty as pilots.
- G. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 8, all work performed by CSXT shall be deemed performed for the sole benefit of GITM and, GITM shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal, except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of CSXT. GITM shall protect, indemnify, and save harmless CSXT and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which GITM is responsible.
- H. If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- I. In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the AAR as to the handling of any claims for the loss or damage to lading.
- J. Neither party hereto shall have the right to prosecute any claim or make any demand against the other party hereto for any indirect, special or consequential damages, including but not limited to loss, damage or liability accruing to it by reason of any interference with, interruption of or delay in the operating of its trains, engines or cars or the transportation of its freight on account of delays or interruption in the use of any portion of said tracks used jointly under the terms hereof.
- K. Notwithstanding anything to the contrary in this Article 13, whenever Loss occurs with the trains and locomotives of both CSXT and GITM being involved, and such Loss is attributable solely to the gross negligence or willful or wanton misconduct of only one of the parties hereto, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Loss, 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 Loss. The parties hereto agree that, for purposes of this Article 13.K, "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."

ARTICLE 14. CLAIMS

- A. Except as provided in Subarticle B below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- B. Each party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and CFR 1005, or in accordance with any applicable transportation contract.
- C. In the event a claim or suit is asserted against CSXT or GITM, which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or CFR 1005, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds [REDACTED].
- F. Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.
- G. It is understood that nothing in this Article shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 13.

ARTICLE 15. INSURANCE

- A. During the term of this Agreement, GITM at its sole cost and expense, shall procure and maintain in effect the following insurance policies:

- (i) Comprehensive Railroad liability insurance, with limits of not less than [REDACTED] single limit, bodily injury and/or property damage, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to, or destruction of property, including the loss of use thereof, in any one occurrence, subject to a self-insured retention limit not to exceed [REDACTED], including contractual liability insurance, which names CSXT as an additional insured; and
 - (ii) Automobile liability insurance, naming CSXT as an additional insured, covering injury and property damage liability arising out of the maintenance or use of owned hired, or non-owned motor vehicles, with a coverage limit not less than [REDACTED] per occurrence; and
 - (iii) Railroad property insurance covering real and business property; bridges; tunnels and trestles; track and roadbed (excluding floods and earthquakes); property of others in the care, custody and control of GITM (excluding foreign rolling stock and bill of lading); rolling stock; locomotives; work equipment; property in the course of construction; contractor's equipment; property in the course of transit with a coverage limit of not less than [REDACTED] per occurrence listing CSXT as a loss payee, but only as its interest may appear.
- B. This Insurance coverage shall be effected under standard form policies issued by insurers of financial responsibility, which are rated "A" or better by either Best's Insurance Reports, Standard & Poor's Insurance Rating Service or Moody's Investors Service. CSXT reserves the right to reject as inadequate coverage by an insurance company rated less than "A" by the aforementioned rating services.
- C.
 - (i) The insurance shall be evidenced by a current certificate furnished by GITM to CSXT as an additional insured with its return of the executed Agreement. Subsequently, annual renewal certificates of insurance shall be furnished via email to: csx@ebix.com.
 - (ii) Such certificate shall be subject to the prior approval of CSXT's Insurance Department. All of the required endorsements and notice provisions shall be stated on the certificate of insurance that is provided to CSXT. In addition, GITM shall provide CSXT's Insurance Department notice of any claim arising under this Agreement and any other correspondence dealing with insurance and insurance matters directly relating to this Agreement.
- D. During the term of this Agreement, it is understood that CSXT is self-insured.
- E. All insurance required hereunder shall be effected by valid and enforceable policies issued by insurer(s) of responsibility an authorized to do business in the State of Georgia, all subject to the reasonable approval of CSXT. The required insurance will include waivers of subrogation rights endorsements, will not have any exclusion for liability relating to railroad operations, and will contain a provision for thirty (30) days written notice to CSXT

prior to any expiration or termination of, or any material change in the coverage provided.

- F. The liability assumed by GITM under this Agreement, including, but not limited to, GITM's indemnification obligations, shall not be limited to the insurance coverage stipulated herein.

ARTICLE 16. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of GITM to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from CSXT, CSXT shall have the right at its option, to terminate the Trackage Rights and GITM's use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by CSXT shall not impair its rights under this Agreement or any cause or causes of action it may have against GITM for the recovery of damages.

ARTICLE 17. REGULATORY APPROVAL

- A. Should this Agreement require the prior approval of the Surface Transportation Board (STB), GITM at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. CSXT shall assist and support efforts of GITM to secure any necessary STB approval of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the exemption of this Agreement from regulation, GITM, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 18. ABANDONMENT OF SUBJECT TRACKAGE

- A. Notwithstanding the provisions of Article 19, CSXT shall have the right, subject to securing any necessary regulatory approval, to abandon the Subject Trackage or any portion thereof. Before filing an application for regulatory approval or request for exemption of such abandonment, CSXT shall give GITM ninety (90) days' advance notice in writing of its intention to do so in order that GITM may discontinue its use thereof.
- B. If GITM does not promptly file an application seeking approval or request for exemption of the discontinuance of CSXT's operations over the Subject Trackage or portion thereof, CSXT shall be deemed to have been given GITM's power of attorney to take such action on GITM's behalf and GITM shall not oppose such a filing, and shall be responsible for reimbursing CSXT for any reasonable cost associated with said filing, including but not limited to attorney and filing fees.
- C. In the event any application filed by CSXT is granted but an application filed by GITM under Subsection B above is denied by the proper regulatory authority, GITM shall assign the Agreement to a party designated by CSXT. If GITM fails to agree to assign the Agreement to a party designated by CSXT, CSXT shall be deemed to have been given

GITM's power of attorney to take such action on GITM's behalf and GITM shall not oppose such action, and shall be responsible for reimbursing CSXT for any reasonable cost associated with said action, including but not limited to attorney fees.

- D. In the event CSXT abandons any portion (or all) of the Subject Trackage or portion thereof under circumstances which (because of changes in the law or otherwise) are not subject to handling under the procedures outlined above, the Parties shall cooperate and take such action as is necessary to assure that GITM promptly terminates its operations over the segment to be abandoned.
- E. Except as otherwise expressly agreed in writing, in the event any actions taken by the Parties under this Article 18 result in an obligation imposed by any competent authority on either or both Parties to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the Party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

ARTICLE 19. TERM

- A. This Agreement shall be effective the day and year first above written or, in the event STB authority is required, on the date upon which any required Notice of Exemption before the STB becomes effective (the "Effective Date"), and shall remain in full force and effect for three (3) years unless terminated earlier pursuant to the terms of this Agreement, at which time GITM shall cease use of the Subject Trackage. The Trackage Rights that are the subject of this Agreement are only intended for a limited term.
- B. Within thirty (30) days following the date of this Agreement, GITM, at its sole expense, shall submit to the STB (or successor agency) regulatory filing(s) to obtain any necessary authority or exemption to exercise the Trackage Rights. CSXT will join in any such application or pleading to the STB, upon request of GITM. GITM shall provide CSXT with an opportunity to review and comment on GITM's regulatory filing prior to their submission to the STB. In the event that one or more parties oppose the granting of the regulatory authority or exemption sought by GITM or appeal a determination to grant such authority or exemption, GITM shall promptly respond to such opponents and shall pursue in good faith appeals of any adverse decision by the STB.
- C. Termination of this Agreement shall not relieve or release either Party from any obligation assumed, except that GITM shall no longer be permitted to operate on the Subject Trackage, or from any liability which may have arisen or been incurred by either Party under the terms of this Agreement prior to the termination hereof.
- D. Upon termination of this Agreement prior to the expiration of the Term, and if GITM obtained approval or exemption from the STB to operate pursuant to this Agreement, GITM shall immediately make the necessary filing with the STB to discontinue GITM's rights covered by this Agreement. Should GITM fail to make such a filing within thirty (30) days of said termination, CSXT shall be deemed to have been given GITM's power

of attorney to take such action on GITM's behalf and GITM shall not oppose such a filing, and shall be responsible for reimbursing CSXT for any reasonable cost associated with said filing, including but not limited to attorney and filing fees. GITM agrees that monetary damages will not be a sufficient remedy in the event it breaches this provision, and agrees that specific performance or other injunctive relief would be appropriate under the circumstances.

ARTICLE 20. FORCE MAJEURE

CSXT shall not be responsible to GITM for delays of any kind under this Agreement nor for failure to perform under this Agreement if such failure to perform is caused by circumstances beyond its control, including, but not limited to, acts of God, floods, earthquakes, storms, hurricanes, tornadoes or other severe weather or climatic conditions, actual or threatened acts of terrorism or the public enemy, war, blockade, insurrection, vandalism, or sabotage, fire, accident, wreck, derailments, washout or explosion, acts of civil or military authority, strikes or labor disruptions, fires and other events beyond the reasonable control of CSXT. CSXT shall provide GITM with prompt notice of any event of force majeure and shall take reasonable steps to resolve such event. Once the force majeure event is resolved, CSXT shall notify GITM, and CSXT shall promptly re-institute operations pursuant to this Agreement.

ARTICLE 21. ARBITRATION

- A. Either Party may initiate binding arbitration pursuant to this Article 21 by providing written notice to the other Party (the "Notice Recipient"). The date on which the Notice Recipient receives the written notice shall be the "Notice Date". The arbitrator shall be experienced in railroad matters and transportation law; provided that the arbitrator shall be a national engineering firm if the dispute relates solely to an engineering matter, or a national accounting firm if the dispute relates solely to an accounting or billing matter, in each case, without any questions of law or contract interpretation. If the Parties are able to agree on an arbitrator to resolve the dispute within five (5) days after the Notice Date, then such person or firm, as the case may be, shall act as the arbitrator.
- B. If the Parties are unable to agree upon an arbitrator within five (5) days after the Notice Date and if the dispute at issue is not an engineering, accounting or billing issue, but is subject to arbitration under this Agreement, then, within ten (10) days after the Notice Date, either Party may request the American Arbitration Association ("AAA") to select three candidates knowledgeable in railroad commercial and operational matters, and each Party shall eliminate one candidate. The remaining candidate shall serve as arbitrator and the arbitration shall be conducted pursuant to the Commercial Arbitration Rules of the AAA. If the dispute at issue is an engineering, accounting or billing issue, each Party shall provide to the other a list of up to three (3) national engineering firms with experience in railroad engineering or national accounting firms with experience in railroad accounting (as applicable) that have not been engaged by such Party in the past five (5) years. After the exchange of the lists, each Party shall notify promptly the other Party of any firm on the other Party's list that has been engaged by it in the past five (5) years, and such firm(s)

shall be removed from consideration. Within fifteen (15) days after the Notice Date, the Parties shall agree on one of the remaining firms on the lists to act as the arbitrator, or the arbitrator will be chosen by lot by a representative of the Party that initiated the arbitration in the presence of a representative of the Notice Recipient.

- C. Within thirty (30) days after the Notice Date, each Party shall submit to the arbitrator and to the other Party its position regarding the disputed item(s) (including, if applicable, the scope of work and budget for each disputed item). Within thirty-five (35) days after the Notice Date, each Party shall submit to the arbitrator and the other Party a reply to the other Party's position.
- D. The arbitration shall be conducted "baseball style." Within sixty (60) days after the Notice Date, the arbitrator shall select the position of one of the Parties, without modification. In making its decision regarding a dispute over maintenance items, the arbitrator shall determine, to the extent applicable, the appropriate level of normalized maintenance and capital projects and the related budget for the disputed items, taking into consideration the current conditions, FRA track class, projected train frequency and tonnage in the upcoming calendar year and applicable AREMA standards, and shall select the Party's position that most closely reflects these determinations. In making its decision regarding a dispute over dispatching items, the arbitrator shall apply, to the extent applicable, the Dispatching Protocols to resolve the dispute. If the Dispatching Protocols do not apply to, or do not resolve, the dispute, the arbitrator shall determine such additional protocols to resolve the dispute, consistent with industry standards and the intent of the Parties, as reflected by the terms of this Agreement.
- E. The decision of the arbitrator shall be binding, final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the Parties. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

ARTICLE 22. SUCCESSORS AND ASSIGNS

Neither Party shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, partnership or corporation without obtaining the prior written consent of the other Party; provided, however, that such consent shall not be necessary if such transfer or assignment is by CSXT to a successor of all or substantially all of the rail properties of CSXT or to a successor or assign of CSXT's interest in the Subject Trackage. CSXT reserves the right to terminate the Agreement in the event a Class I carrier or an Affiliate of a Class I carrier acquires a controlling interest in GITM or the assets of GITM. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

ARTICLE 23. NOTICE

All notices required to be given by either party to the other shall be in writing and addressed as follows:

If to CSXT: Director Intercarrier Agreements
CSX Transportation, Inc.
500 Water Street – J801
Jacksonville, FL 32202

If to GITM: President
Golden Isles Terminal Railroad, Inc.
13901 Sutton Park Drive South
Suite 125
Jacksonville, FL 32224

With copy to:

General Counsel
Genesee & Wyoming Inc.
20 West Avenue
Darien, CT 06820

or to such other address as either party may notify the other party to substitute in writing.

ARTICLE 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 third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.
- B. This Agreement contains the entire understanding of the parties hereto and supersedes any and all written and oral understandings between the parties.
- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by authorized representatives of both parties to this Agreement.
- D. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F. Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other separate division, or combination thereof, for the determination of legality, so that if any separate division is determined to be unconstitutional, illegal, violative of trade or

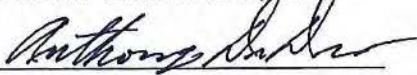
commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall be treated as a nullity, but such holding or determination shall have no effect upon the validity or enforceability of each and every other separate division, or any combination thereof.

- 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 in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- H. This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- I. The recitals to this Agreement are, by this reference, incorporated into and made a part of this Agreement.
- J. Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, affiliate or subsidiary company and the attorneys, accountants, consultants, officers and employees of such party, parent, affiliate or subsidiary company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.
- K. All matters related to the interpretation, construction, validity and enforcement of this Agreement shall be governed by and construed in accordance with the domestic laws of the State of Florida, without giving effect to any choice or conflict of laws, provision or rule that would cause the application of laws of any jurisdiction other than the State of Florida.
- L. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.
- M. Except as may be expressly provided by this Agreement, nothing in this Agreement shall modify or amend any other agreement between GITM and CSXT.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of **July 9, 2019**.

CSX TRANSPORTATION, INC.

By: 

Anthony DiDeo
Director Intercarrier Agreements

GOLDEN ISLES TERMINAL
RAILROAD, INC.

By: 

Name: Andrew T. Chumley
Title: president

Exhibit A
Subject Trackage in Savannah, Georgia
(Not to Scale)

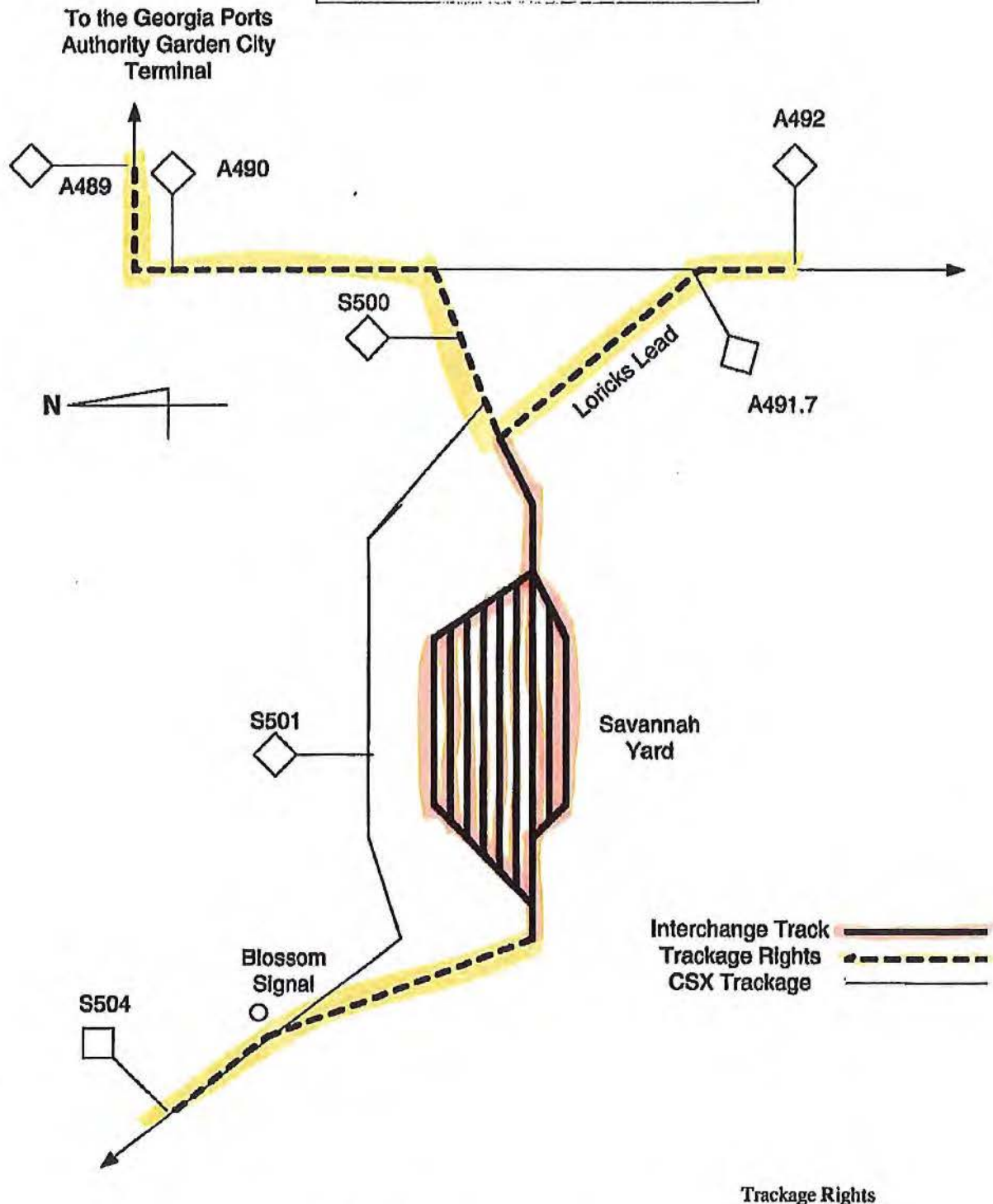


EXHIBIT C
CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

STB DOCKET NO. FD 36334

**GOLDEN ISLES TERMINAL RAILROAD, INC.
- TRACKAGE RIGHTS EXEMPTION -
CSX TRANSPORTATION, INC.**

CSX Transportation, Inc. ("CSXT") has agreed to grant overhead trackage rights to Golden Isles Terminal Railroad, Inc. ("GITM") over the line of railroad between milepost A489± near Georgia Ports Authority Garden City Terminal and milepost S500± at or about the entrance to CSXT's Savannah Yard, plus sufficient head or tail room (i) from the north entrance to Old Savannah Yard, through Loricks Lead, out on Number One Main to milepost A492±, and (ii) from the south entrance of Old Savannah Yard, through the Blossom signal, out on Mainline to milepost S504±. The trackage rights will become effective thirty (30) days after the filing of the notice of exemption.

As a condition to this exemption, any employees adversely affected by the trackage rights will be protected under the conditions imposed in *Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railroad*, 360 I.C.C. 653 (1980).

The Notice is filed under 49 C.F.R. §1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board,

_____, Acting Director, Office of Proceedings