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May 3, 2018



VIA FEDEX

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

Re: Wilmington Terminal Railroad, Limited Partnership -
Temporary Trackage Rights Exemption -
CSX Transportation, Inc.
STB Docket No. FD 36188

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Notice of Exemption of Wilmington Terminal Railroad, Limited Partnership ("WTRY"), together with an additional 20 copies of the maps, and our check in the amount of \$1300 representing the filing fee for this Notice.

Also enclosed for filing are the original and 10 copies of each of the following:

- (1) Motion of WTRY for Protective Order (expedited consideration requested).
- (2) Highly Confidential Version of Temporary Trackage Rights Agreement between WTRY and CSX Transportation, Inc. (filed under seal in a separate envelope).

Please time stamp the extra copy of this letter to indicate receipt of all of the foregoing, and return it to me in the stamped, self-addressed envelope provided for your convenience.

FEE RECEIVED
May 4, 2018
SURFACE
TRANSPORTATION BOARD

219626855

FILED
May 4, 2018
SURFACE
TRANSPORTATION BOARD

Cynthia T. Brown
May 3, 2018
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/dml
Encls.

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36188



WILMINGTON TERMINAL RAILROAD, LIMITED PARTNERSHIP

- TEMPORARY TRACKAGE RIGHTS EXEMPTION -

CSX TRANSPORTATION, INC.

VERIFIED NOTICE OF EXEMPTION

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

Attorneys for Wilmington Terminal
Railroad, Limited Partnership

Dated: May 3, 2018



Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36188

**WILMINGTON TERMINAL RAILROAD, LIMITED PARTNERSHIP
- TEMPORARY TRACKAGE RIGHTS EXEMPTION -
CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

Wilmington Terminal Railroad, Limited Partnership (“WTRY”), a Class III railroad, files this Verified Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(8) to exempt from the provisions of 49 U.S.C. §11323, the grant of temporary trackage rights by CSX Transportation, Inc. (“CSXT”) over the line of railroad between the Port of Wilmington in Wilmington, North Carolina, at CSXT milepost ACB 249.74 and the switch at CSXT milepost ACB 243.96, and between the switch at CSXT milepost ACB 243.96 and the switch at CSXT’s Davis Yard in Navassa, North Carolina at CSXT milepost SE 359.79, a distance of approximately 10.0 miles (the “Line”). The trackage rights are based on a written agreement between the parties, not sought in a responsive application, are for overhead operations, and have a term of one year from the effective date of this Notice. Accordingly, the temporary trackage rights covered by this Notice are exempt under 49 C.F.R. §1180.2(d)(8).

Required Information

In accordance with the provisions of 49 C.F.R. §1180.4(g), WTRY 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) WTRY is being granted temporary overhead trackage rights by CSXT to allow WTRY to operate overhead intermodal trains between the Port of Wilmington in Wilmington, North Carolina, at CSXT milepost ACB 249.74 and the switch at CSXT milepost ACB 243.96,

and between the switch at CSXT milepost ACB 243.96 and the switch at CSXT's Davis Yard in Navassa, North Carolina at CSXT milepost SE 359.79, a distance of approximately 10.0 miles (the "Line"). WTRY will handle only one round trip per day containing traffic only associated with CSXT's "Queen City Express" service within an operating window approved by CSXT's operating officer in charge. Pursuant to the trackage rights agreement, the rights will expire twelve (12) months after the effective date of this Notice, unless terminated earlier.

The name, business address and telephone number of Applicant are: Wilmington Terminal Railroad, Limited Partnership, 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) WTRY intends to commence operations under the trackage rights on or after the effective date of this notice.

(a)(1)(iii) The trackage rights will allow WTRY to bridge loaded and empty trains containing containers or trailers in intermodal service in connection with CSXT's "Queen City Express" service.

(a)(5) WTRY operates in the State of North Carolina, and the Line is also located in the State of North Carolina.

(a)(6) A map showing the Line is attached as Exhibit A. Twenty extra copies of the map are also included.

(a)(7)(ii) A redacted public version of the temporary trackage rights agreement is attached as Exhibit B. (Applicant is 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 temporary trackage rights agreement is being filed under seal.)

Labor Protection

Applicant 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). Any employees adversely affected by the discontinuance of these temporary trackage rights will be entitled to protection under the conditions imposed in *Oregon Short Line Railroad Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

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, WTRY requests that the Board issue a notice of exemption for the temporary trackage rights that are the subject of this Notice.

Respectfully submitted,



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

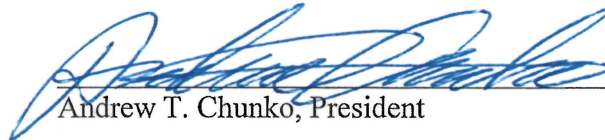
Attorneys for Wilmington Terminal
Railroad, Limited Partnership

Dated: May 3, 2018

VERIFICATION

I hereby verify on behalf of Wilmington Terminal Railroad, Limited Partnership, 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 May 3, 2018.



Andrew T. Chunko, President

EXHIBIT A

MAP

Exhibit A
WTRY Trackage Rights and Interchange Tracks
in Wilmington, NC
(Not to Scale)
February 2, 2018

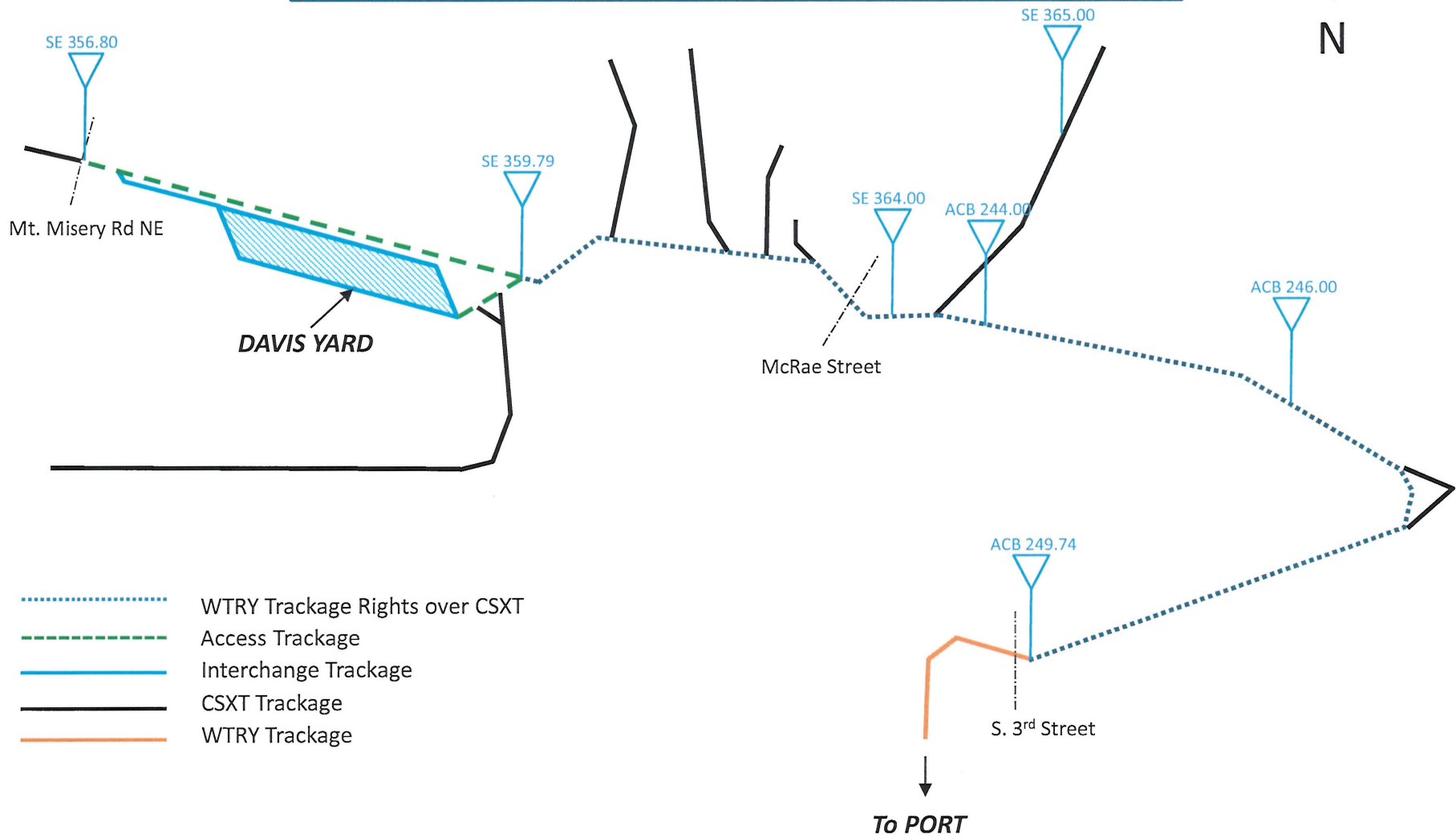


EXHIBIT B
TEMPORARY TRACKAGE RIGHTS AGREEMENT
(“PUBLIC” VERSION)

AGREEMENT
between
CSX TRANSPORTATION, INC.
and the
WILMINGTON TERMINAL RAILROAD, LIMITED PARTNERSHIP

In the Matter of
Temporary Trackage Rights over CSXT's Line between the Port of
Wilmington and CSXT's Davis Yard

THIS AGREEMENT, made and effective as of this 2nd day of MAY, 2018, by and between **CSX TRANSPORTATION, INC.**, a Virginia corporation, whose principal place of business is Jacksonville, FL, referred to as "CSXT" or "Owner", and the **WILMINGTON TERMINAL RAILROAD, Limited Partnership**, a North Carolina company, whose principal place of business is Wilmington, NC, hereinafter referred to as "WTRY" or "User". CSXT and WTRY are sometimes referred to individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, in connection with CSXT's Queen City Express intermodal service between Charlotte, NC and Wilmington, NC, the North Carolina State Ports Authority ("SPA") has requested and CSXT consents to permit WTRY to provide limited expedited intermodal service outside of normal CSXT service windows between the Port of Wilmington (the "Port") and CSXT's Davis Yard at Navassa, NC to fulfill the time-sensitive shipping requirements of their customers; and

WHEREAS, the Parties agree to WTRY's operation of trains over CSXT by temporary trackage rights agreement;

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

ARTICLE 1. GRANT OF TEMPORARY TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, Owner hereby grants to User the right to temporarily operate its trains (locomotives or cars) with its own crews (hereinafter referred to as the "Trackage Rights") in overhead service over the following 10.0-mile segment of Owner's railroad between the Port and Davis Yard as shown in BLUE DOTTED LINE on the plan attached hereto, made a part hereof, marked Exhibit "A" and dated February 2, 2018 (hereinafter referred to as the "Subject Trackage"):

- That portion of the line between the Port and Davis Yard from CSXT milepost ACB 249.74 extending northeastwardly then northwestwardly to the switch at CSXT milepost ACB 243.96 as shown on Exhibit A.

- That portion of the line between the switch at CSXT milepost ACB 243.96 extending westwardly to Davis Yard switch at CSXT milepost SE 359.79.

ARTICLE 2. USE OF SUBJECT TRACKAGE

- A. User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage; provided that the rights granted to such other users do not unreasonably interfere with the exercise of User's rights hereunder.
- B. User may use the Subject Trackage solely for the purpose of the overhead movement of its own trains between the end points of the Subject Trackage.
- C. User 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 Owner, preclude the emergency use by User of such auxiliary Subject Trackage as may be designated by Owner for such purposes.
- D. Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

ARTICLE 3. RESTRICTION ON USE

- A. User's Trackage Rights shall be restricted to the operation of a train carrying containers or trailers in intermodal service ("Intermodal Train"), one roundtrip per day and containing traffic only associated with the Queen City Express service, over the Subject Trackage so long as such operation by User is in an operating window that has been approved by Owner's operating officer in charge, and so long as User's movements do not unreasonably interfere with Owner's operations on the Subject Trackage.
- B. User shall not perform any other freight service whatsoever at any point located on the Subject Trackage.
- C. Shipments transported by User over the Subject Trackage are limited to shipments moving solely in the account of Owner. User shall not transport any other shipments over the Subject Trackage unless otherwise provided in a written amendment to this Agreement.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- A. When operating over the Subject Trackage, User's locomotives and crews shall be equipped to communicate with Owner on radio frequencies normally used by Owner 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 reasonable approval of Owner's representative or his designee.

ARTICLE 5. COMPENSATION

- A. The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be \$[REDACTED] per car mile, loaded or empty (hereinafter referred to as the "Current Charge"). For the avoidance of doubt, each well of an articulated car shall count as one (1) car. Each locomotive and caboose, for the purpose of this Agreement shall be counted as one (1) car.
- B. Within thirty (30) days of the end of each month, User shall report to Owner the number of loaded and empty cars (hereinafter referred to as Car Counts) moving over the Subject Trackage Rights.
- C. The monthly Trackage Rights charges shall be calculated in accordance with the following formula:
$$(\# \text{ of Loaded and Empty Cars}) \times (10.0 \text{ miles}) \times (\text{Current Charge})$$
- D. Owner (or its agent) shall issue a bill to User for the Trackage Rights charges within 30 days of receipt of the Car Counts report provided by the User.
- E. WTRY shall compensate CSXT at [REDACTED] dollars (\$[REDACTED] per car for any cars delivered by WTRY to CSXT at Davis Yard that are not waybilled for an outbound Queen City Express train.
- F. The Parties agree that no fees or other consideration shall be owed to WTRY by CSXT for the Intermodal Train described within this Agreement, regardless of whether under a tariff issued by WTRY or otherwise, except as expressly set forth in this Agreement. Any compensation to WTRY for transport and/or switching of an Intermodal Train by WTRY shall either be absorbed by WTRY or paid by a third party and covered under a separate agreement.

ARTICLE 6. INTENTIONALLY LEFT BLANK

ARTICLE 7. PAYMENT OF BILLS

- A. All payments called for under this Agreement shall be made by User within sixty (60) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties shall be adjusted in the accounts of a subsequent month. The records of each Party, insofar as they pertain to matters covered by this Agreement shall be open at all reasonable times to inspection by the other Party for a period of two (2) years from the date of billing.
- B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE

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

ARTICLE 9. INTENTIONALLY LEFT BLANK

ARTICLE 10. ADDITIONS, RETIREMENTS AND ALTERATIONS

- A. Owner, 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 additional changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities, and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities. All such additional or altered facilities shall be owned by Owner.

ARTICLE 11. MANAGEMENT AND OPERATIONS

- A. User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains (locomotives and cars) while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.
- B. User in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains (locomotives and cars) over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner, except that User shall not be prohibited from utilizing crew consists in accordance with User's labor agreements. User'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 Owner's operating rules and regulations without the prior consent of Owner.
- C. After proper supervisory training by Owner, User will be responsible to qualify User's crews between Davis Yard and the Port. User will qualify its crews by adding a qualified supervisor to the crew between Davis Yard and the Port. The Parties shall make a reasonable effort to have all crews qualified within sixty (60) days of service startup. After such date, pilots provided by CSXT upon request of WTRY shall be billed at the rate of [REDACTED] DOLLARS (\$ [REDACTED] per pilot per day.
- D. Owner may at its option, request User to conduct an investigation of User's employee(s) working on Owner's property, and alleged to have violated Owner's safety rules,

- regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. Upon receipt of such notification, User's local Transportation Officer shall arrange to issue proper notice to the User's employee(s) of the investigation. Owner's request to schedule the investigation must comply with the time limits provided in the applicable labor agreement applicable to User's employees. Owner shall provide its regulations, supplements, safety rules and any necessary witnesses to User at no cost.
- E. If Owner timely requested User to conduct an investigation, Owner shall have the right to suggest appropriate discipline including the right to exclude from the Subject Trackage any employee of User, except officers, determined as the result of User's investigation or hearing described below, to be in violation of Owner'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 Owner desires to bar User's employee from service on Owner's territory pending an investigation by User, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.
- G. If User conducts an investigation, its officer shall conduct the investigation, but an officer of Owner shall be present. After the investigation is concluded, User shall make a recommendation as to the discipline to be assessed, and furnish a copy of that recommendation to Owner. If the Owner or User shall disagree on the discipline to be imposed, User shall have the right to determine the discipline, if any, that is imposed. User's Transportation Officer shall arrange to assess discipline within the applicable time limits.
- H. In the event a claim is progressed to arbitration challenging the discipline assessed, Owner shall be given an opportunity to review User's submission. If the discipline assessed is "overturned" by the arbitration, and the discipline assessed was being banned from Owner's property, Owner shall permit User's employee to return to Owner's property.
- I. The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to any party and in such manner as shall afford the most economical and efficient manner of movement of all traffic over the Subject Trackage.
- J. In the event that a train of User shall be forced to stop on the Subject Trackage, and such stoppage is due to insufficient hours of service remaining among User's crew, or due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not

limited to the right to recrew User'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 User shall reimburse Owner for the cost of rendering any such assistance.

- K. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.
- L. In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the Parties shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 12. MILEAGE AND CAR HIRE

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

ARTICLE 13. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform or provide such service, or by mutual agreement between the Parties at the time, User may perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed that are owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

ARTICLE 14. LIABILITY

The responsibility and liability between the Parties for (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, 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 should 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 Owner and User, then (i) each Party shall be solely responsible for any Loss to its own employees, locomotives and equipment and those cars in its own revenue account (including lading), and (ii) the Parties shall be equally responsible for any Loss to the Subject Trackage and 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 for a Loss under this Article as between the Parties, (i) subject to clause (ii) below, a Loss involving one of the Parties and a third party or parties shall be construed as being the sole responsibility of that one Party and (ii) except for User, the equipment of any third party railroad company or companies being detoured or operating over the Subject Trackage pursuant to Owner's consent or authority, and all persons other than Owner's employees engaged in moving such equipment, shall be considered the equipment and employees of Owner.
- D. Whenever any liability, cost, or expense is assumed by or apportioned to a Party under the foregoing provisions, that Party shall (i) forever protect, indemnify, and save harmless the other Party 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 (including without limitation attorney's fees and expenses and court or regulatory expenses) assumed by that Party or apportioned to it, and (ii) shall defend at its cost such indemnified Party against any claims for such liabilities, loss and expenses with counsel selected by the indemnifying Party and reasonably acceptable to the indemnified Party, 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. Notwithstanding anything to the contrary in this Article 14, whenever Loss occurs with the trains and locomotives of both Owner and User being involved, and such Loss is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties, 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 agree that, for purposes of this Article 14.E, "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."
- F. Notwithstanding any provision of this Article 14 to the contrary, each Party shall assume

and bear all responsibility for any Loss caused by acts or omissions of any its employees while under the influence of drugs or alcohol.

- G. In every case of death or injury suffered by an employee of either User or Owner, 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.
- H. For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such employees are on duty as pilots for User.
- I. [INTENTIONALLY OMITTED.]
- J. 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.
- K. In the event of a Loss as set out herein, the Parties, unless otherwise agreed between them in writing, shall be bound by the Freight Claim Rules, Principles and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- L. Neither Party shall have the right to prosecute any claim or make any demand against the other Party 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.
- M.

ARTICLE 15. CLAIMS

- A. Except as provided in Subarticle B below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the Party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

- B. Each Party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.
- C. [INTENTIONALLY OMITTED.]
- D. In the event a claim or suit is asserted against Owner or User 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.
- E. 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.
- F. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither Party shall settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds [REDACTED] DOLLARS (\$ [REDACTED]).
- G. 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 employees arising under its collective bargaining agreements with its employees.
- H. It is understood that nothing in this Article 15 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 14.

ARTICLE 16. INSURANCE

- A. During the term of this Agreement WTRY, at its sole cost and expense, shall procure and maintain in effect a policy of railroad liability insurance, with limits of not less than [REDACTED] Dollars (\$ [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] [REDACTED] [REDACTED].

██████ Dollars (\$██████) including contractual liability insurance, which names CSXT as an additional insured. Failure to procure and maintain such insurance in force shall constitute a breach of this Agreement. WTRY shall provide a minimum of thirty (30) days' advance written notice to CSXT prior to any material changes to or cancellation of such policy.

- B. This Insurance coverage shall be effected under standard form policies issued by insurers of financial responsibility. All insurance companies must be A. M. Best rated A- and Class VII or better. CSXT reserves the right to reject, as inadequate, coverage by an insurance company with ratings lower than the foregoing.
- C. The Insurance shall be evidenced by a current certificate of insurance furnished by WTRY to CSXT as an additional insured with its return of executed Agreement. Subsequently, annual renewal certificates of insurance shall be furnished to:

Insurance Department
CSX Transportation, Inc.
500 Water Street, C907
Jacksonville, FL 32202
insurancedocuments@csx.com

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

- D. During the term of this Agreement, it is understood that CSXT is self-insured.

ARTICLE 17. DEFAULT AND TERMINATION

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

ARTICLE 18. REGULATORY APPROVAL

- A. User at its own cost and expense shall initiate at the Surface Transportation Board (STB)

and thereafter diligently pursue an appropriate notice of exemption for temporary trackage rights under 49 CFR 1180.2(d)(8). Owner shall assist and support efforts of User 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, User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 19. ABANDONMENT OF SUBJECT TRACKAGE

- A. Notwithstanding the provisions of Article 20, Owner 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, Owner shall give User ninety (90) days' advance notice in writing of its intention to do so in order that User may discontinue its use thereof.
- B. If User does not promptly file an application seeking approval or request for exemption of the discontinuance of User's operations over the Subject Trackage or portion thereof, Owner shall be deemed to have been given User's power of attorney to take such action on User's behalf and User shall not oppose such a filing, and shall be responsible for reimbursing Owner 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 Owner is granted but an application filed by User under Subsection B above is denied by the proper regulatory authority, User shall assign the Agreement to a party designated by Owner. If User fails to agree to assign the Agreement to a party designated by Owner, Owner shall be deemed to have been given User's power of attorney to take such action on User's behalf and User shall not oppose such action, and shall be responsible for reimbursing Owner for any reasonable cost associated with said action, including but not limited to attorney fees.
- D. In the event Owner 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 User 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 19 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 20. 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 Board becomes effective (the "Effective Date"), and shall remain in full force and effect for twelve (12) months (the "Term") unless terminated earlier pursuant to the terms of this Agreement, at which time User shall cease use of the Subject Trackage.
- B. Within thirty (30) days following the date of this Agreement, User, 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. Owner will join in any such application or pleading to the STB, upon request of User. User shall provide Owner with an opportunity to review and comment on User'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 User or appeal a determination to grant such authority or exemption, User 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 User 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 User obtained approval or exemption from the STB to operate pursuant to this Agreement, User shall immediately make the necessary filing with the STB to discontinue User's rights covered by this Agreement. Should User fail to make such a filing within thirty (30) days of said termination, Owner shall be deemed to have been given User's power of attorney to take such action on User's behalf and User shall not oppose such a filing, and shall be responsible for reimbursing Owner for any reasonable cost associated with said filing, including but not limited to attorney and filing fees. User 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 21. FORCE MAJEURE

Owner shall not be responsible to User for delays or failure to perform under this Agreement if such delays or failure to perform are caused by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties, embargoes or AAR service orders; FRA orders, or

governmental laws, orders or regulations.

ARTICLE 22. ARBITRATION

- A. Either Party may initiate binding arbitration pursuant to this Article 22 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 23. 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 the Owner to a successor of all or substantially all of the rail properties of Owner or to a successor or assign of the Owner'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 WTRY or the assets of WTRY. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

ARTICLE 24. NOTICE

Any notice required or permitted to be given by one Party to the other under this Agreement shall be deemed given on the date sent by certified mail express carrier, or by such other means as the Parties may agree, and shall be addressed as follows:

If to User:

Wilmington Terminal Railroad, Limited Partnership
13901 Sutton Park Drive South
Jacksonville, FL 32224
Attention: President

With copy to:

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

If to Owner:

Director Joint Facilities
CSX Transportation, Inc.
500 Water Street, J315
Jacksonville, FL 32202

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

ARTICLE 25. GENERAL PROVISIONS

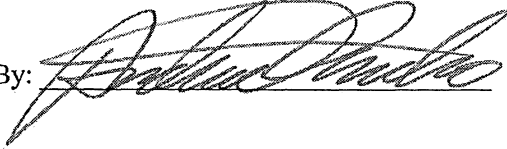
- A. This Agreement and each and every provision hereof is for the exclusive benefit of the Parties and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the Parties.
- B. This Agreement contains the entire understanding of the Parties and supersedes any and all oral understandings between the Parties.
- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both Parties.
- 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 and lettering 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, 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 and are in the possession or account of the other Party, such locomotives, cars and equipment shall be considered those of such other Party.
- H. This Agreement is the result of mutual negotiations of the Parties, 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. 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 North Carolina, 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 North Carolina.
- K. 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.
- L. Except as may be expressly provided by this Agreement, nothing in this Agreement shall modify or amend any other agreement between WTRY and CSXT.

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

WILMINGTON TERMINAL
RAILROAD, LIMITED PARTNERSHIP

By: 

Name: Andrew T. Chumko
Title: President

CSX TRANSPORTATION, INC.

By: [Signature]
Name: Shannon F Scott
Title: Direct Interview Agent

Exhibit A
WTRY Trackage Rights and Interchange Tracks
in Wilmington, NC
(Not to Scale)
February 2, 2018

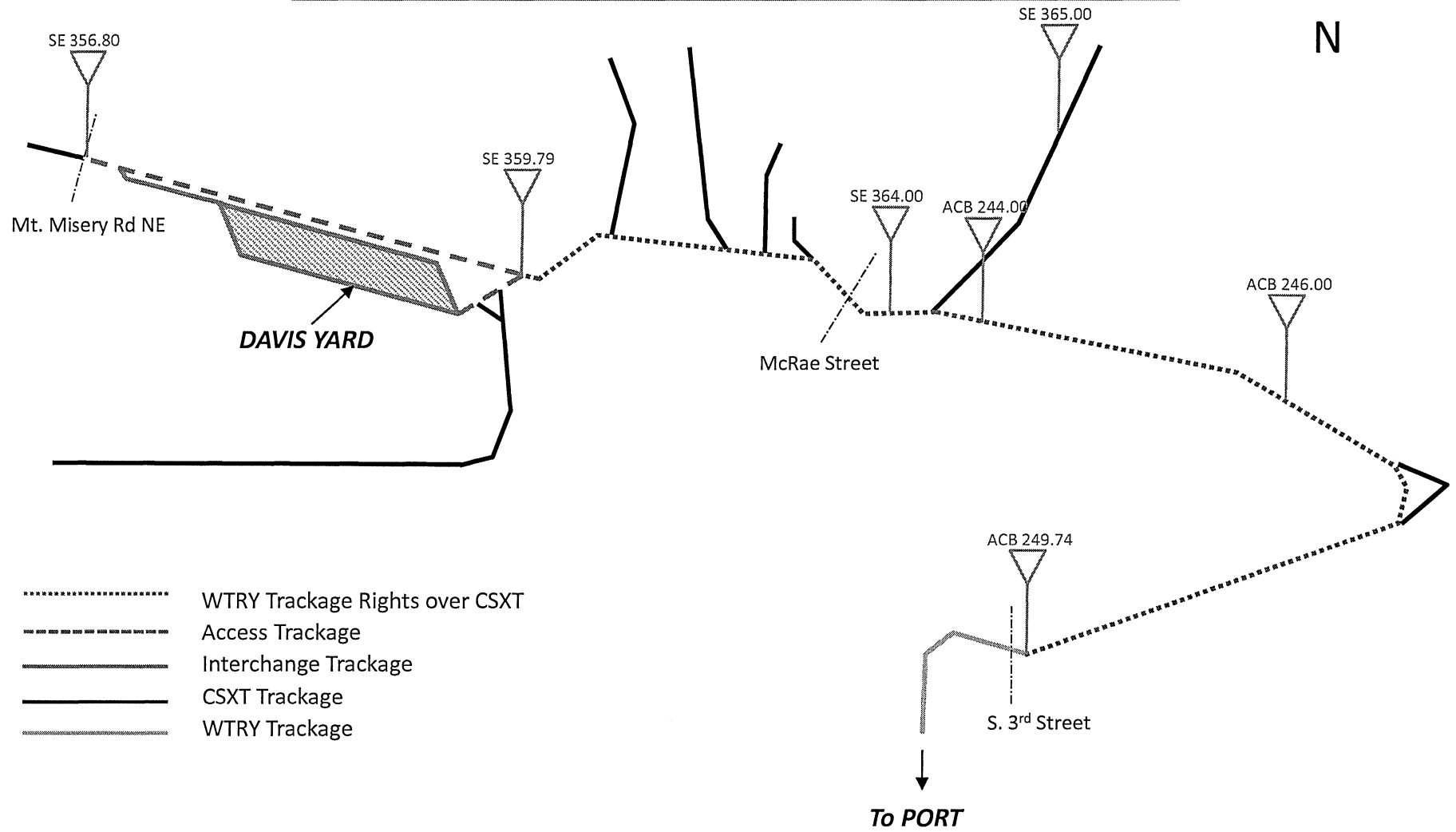


EXHIBIT C
CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

STB DOCKET NO. FD 36188

WILMINGTON TERMINAL RAILROAD, LIMITED PARTNERSHIP - TEMPORARY TRACKAGE RIGHTS EXEMPTION - CSX TRANSPORTATION, INC.

CSX Transportation, Inc. (“CSXT”) has agreed to grant temporary overhead trackage rights to Wilmington Terminal Railroad, Limited Partnership (“WTRY”) between the Port of Wilmington in Wilmington, North Carolina, at CSXT milepost ACB 249.74 and the switch at CSXT milepost ACB 243.96, and between the switch at CSXT milepost ACB 243.96 and the switch at CSXT’s Davis Yard in Navassa, North Carolina at CSXT milepost SE 359.79, a distance of approximately 10.0 miles, to handle only one round trip per day containing traffic only associated with CSXT’s “Queen City Express” service within an operating window approved by CSXT’s operating officer in charge. The temporary trackage rights will become effective thirty (30) days after the filing of the notice of exemption, and will expire twelve (12) months thereafter.

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). Any employees adversely affected by the discontinuance of these temporary trackage rights will be entitled to protection under the conditions imposed in *Oregon Short Line Railroad Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

The Notice is filed under 49 C.F.R. §1180.2(d)(8). 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,

Scott Zimmerman, Acting Director, Office of Proceedings