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ENTERED
Office of Proceedings
December 4, 2017
Part of
Public Record

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December 4, 2017

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. FD 35187 (Sub-No. 1),
*Grand Elk Railroad, Inc. – Acquisition of Incidental Trackage
Rights Exemption – Norfolk Southern Railway Company***

**Includes attachment filed under seal pursuant to a simultaneously-filed motion for
issuance of a protective order pursuant to 49 C.F.R. § 1104.14**

Dear Ms. Brown:

Grand Elk Railroad, Inc. (“GDLK”) and CSX Transportation, Inc. (“CSXT”) advise the Surface Transportation Board (the “Board”) that they have entered a Settlement and Release Agreement effective as of December 1, 2017 (the “Agreement”), pursuant to which GDLK will resume operations over the CSXT Line¹ as of today, in compliance with Grand Elk Railroad, Inc. – Acquisition of Incidental Trackage Rights Exemption – Norfolk Southern Railway Company, Docket No. FD 35187 (Sub-No. 1) (served November 20, 2017).

The Agreement amends the trackage rights agreements dated as of February 6, 1980 (and a supplement thereto dated as of July 6, 1993) and January 24, 1984 (the “Trackage Rights Agreements”). In order to clarify the terms pursuant to which GDLK’s STB-authorized, incidental trackage rights operations will be carried out, attached as Exhibit A are copies of the Trackage Rights Agreements and the Agreement to be included in the docket in FD 30187 (Sub-No. 1). GDLK and CSXT agree that the Trackage Rights Agreements and Agreement govern GDLK’s trackage rights operations over the CSXT Line. The Agreement is offered in both “public” (redacted) and “confidential” (unredacted) form. GDLK and CSXT offer the

¹ The “CSXT Line” consists of contiguous CSXT-owned lines in or near Grand Rapids extending from the connection with the Hughart Running Track at approximately CSXT milepost CH 151.3± at Pleasant Street through milepost CH 151.6/CGE 0.0 to milepost CGE 3.0± north of Ann Street, a distance of approximately 3.3 route miles.

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown
December 4, 2017
Page 2

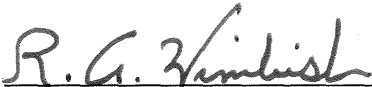
confidential version of the Agreement under seal pursuant to a Motion for Protective Order in Docket Number FD 35187 (Sub-No. 1) appended hereto.

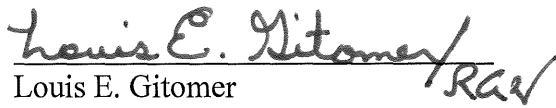
In light of the resolution of the dispute, GDLK and CSXT will shortly make the appropriate filing to request termination of the proceedings pending before the 17th Judicial Circuit Court for Kent County, Michigan, in in Case No. 2016-07855-CZB in accordance with Section 4 of the Settlement and Release Agreement.

Upon the Board's receipt of the Agreements and their inclusion in the record in FD 35187 (Sub-No. 1), GDLK and CSXT jointly request that the above-referenced Board proceeding be deemed closed.

GDLK and CSXT stand ready to provide additional information concerning the arrangements pursuant to which GDLK's trackage rights operations will resume, should the Board so request.

Respectfully submitted,


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Lou@lgraillaw.com
Attorney for CSX Transportation, Inc.

Attachments

cc: All Parties of Record

**Docket No. FD 35187 (Sub-No. 1),
*Grand Elk Railroad, Inc. – Acquisition of Incidental Trackage
Rights Exemption -- Norfolk Southern Railway Company***

EXHIBIT A

**TRACKAGE RIGHTS AGREEMENTS AND
SETTLEMENT AND RELEASE AGREEMENT (PUBLIC VERSION)**

THIS AGREEMENT, made as of this 6th day of February, 1980,

by and between the Chesapeake and Ohio Railway Company (hereinafter called "C&O") referred to as "Owner" and Consolidated Rail Corporation (Hereinafter called "Conrail") referred to as "User":

WHEREAS, Conrail and C&O are operating their trains over their respective trackage between Pleasant Street and Lake Michigan Drive, Grand Rapids, Michigan, and,

WHEREAS, the City of Grand Rapids, Michigan, in an effort to revitalize its central business district and eliminate highway/rail congestion within the downtown area, is desirous of eliminating Conrail trackage through the central business district by having Conrail utilize C&O trackage located west of the central business district, and C&O and Conrail are agreeable to the joint use of C&O trackage; and,

WHEREAS, under Phase One of Railroad Relocation Project in the City of Grand Rapids, Michigan, it is proposed to consolidate Conrail and C&O operations over C&O tracks for a distance of approximately .64 of a mile west of present Pleasant Street Tower, Grand Rapids, Michigan, as described in Section One herein.

NOW, THEREFORE, in consideration of the premises and of the terms, covenants and conditions hereinafter set forth, it is agreed between the parties hereto as follows:

Section 1. Owner hereby grants trackage rights to User over certain rail properties of Owner, as specifically described below and does not cancel, modify or supercede existing agreements covering use of facilities adjacent to or contingent with the herein described facilities. The parties agree, subject to the terms and conditions herein provided, that

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User shall have the right to operate its locomotives, cars and trains with its own crews over the following trackage sections (hereinafter referred to as "Trackage Rights") of Owner's railroad located at and between the following geographic points (hereinafter referred to as the "Joint Trackage"):

- (a) Beginning at Owner's new crossover in Grand Rapids, between Point of Switch, Valuation Station 8021+90 and Point of Switch, Valuation Station 8019+88, near Grandville Avenue, a distance of 202 feet, and;
- (b) Between Point of Switch, Valuation Station 8040+44, and Last Long Tie, Valuation Station 8072+33, near Butterworth and Fulton Streets, a distance of 3,199 feet. Both segments are shown on Plan No. 80043-B, dated October 9, 1979, attached hereto as Exhibit I.

Section 2. Except as otherwise provided below, this agreement is subject to and shall be governed by the "General Conditions, Form A" which are attached hereto and which are incorporated herein by reference with the same effect as if set forth at length. This Agreement shall not be effective unless the parties hereto, in addition to executing this Agreement, have also executed said General Conditions in the space provided therefor at the end thereof.

Section 3. For the purpose of applying Article 2 of the General Conditions-Form A, the Base Charges to be paid by User for

the trackage rights covered by this Agreement will be \$8,000 per year (hereinafter referred to as the "Base Charge").

The Base Charge herein specified is predicated on Owner being reimbursed for calculated maintenance costs as a result of User operating approximately 25,000 units (locomotives, cars and cabooses) over the Joint Trackage in any twelve (12) month period. If there is a significant change in maintenance costs, other than that caused by unit cost variations which are provided for in Article 2(c) of General Conditions-Form A referred to in Article 2 above and/or the number of cars operated on an annual basis, either party hereto may request renegotiation of the Base Charge. The party requesting renegotiation of the Base Charge will furnish necessary documentation to support the request. "Significant change" as used herein is defined as a variation of twenty (20) percent or more from the specified basis on which the original "Base Charge" is established.

Section 4. This Agreement is subject to the prior approval of the Interstate Commerce Commission, and if other federal, state or municipal agency approval is required, User will secure such approval and this Agreement shall take effect after such approval has been secured on the date User commences operations over the Joint Trackage (hereinafter referred to as the "Commencement Date"). The Commencement Date shall be evidenced by an exchange of correspondence between the appropriate Operating officers of the parties hereto.

Section 5. Any notice required or permitted to be given by one party to the other under this Agreement shall be addressed as follows:

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(a) If to the Owner,

c/o Vice President-Transportation, The Chesapeake and Ohio
Railway Company, 2 North Charles Street, Baltimore, Maryland
21201.

(b) If to the User,

c/o Vice President-Operations, Consolidated Rail Corporation,
6 Penn Center Plaza, Philadelphia, Pa. 19104.

Section 6. The Trackage Rights are granted for the purpose of User using same for bridge rights only and User shall not perform any local freight service whatever at any point located on the Joint Trackage. User shall not use any part of the Joint Trackage for the purpose of switching, storage of cars, making or breaking up of trains, except that nothing contained herein shall, upon prior approval by Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

Section 7. It is agreed that for the purposes of all provisions under this Agreement, including General Conditions-Form A, all persons directly engaged in the operation of locomotives, cars and trains of User shall be considered as sole employees of User.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized.

ATTEST:

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

BY

Appd. as to
Legal Form
Rv

ATTEST:

CONSOLIDATED RAIL CORPORATION

ASSISTANT SECRETARY

PRESIDENT

GENERAL CONDITIONS - FORM A

TO TRACKAGE RIGHTS AGREEMENT OF FEBRUARY 6, 1980 BETWEEN

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

AND

CONSOLIDATED RAIL CORPORATION

Article 1. Use of Trackage

(a) User's use of the Joint Trackage shall be in common with Owner, whose right to use the Joint Trackage shall not be diminished by this Agreement and who shall have the right to grant rights in the Joint Trackage to other railroads.

(b) Owner shall have exclusive control of the management and operation of the Joint Trackage.

(c) Unless otherwise stated in the Agreement to which these conditions pertain, User shall have the right to operate in either direction over the Joint Trackage.

(d) These trackage rights shall include User's right to elect, at any time during the term of this Agreement, to operate its trains onto or off of the Joint Trackage wherever said Joint Trackage crosses or connects with User.

(e) If, in the judgment of Owner, exercise of the rights conferred in paragraph (d) above requires additional connections, construction and maintenance of same shall be paid for by User under the terms of this Agreement.

Article 2. Compensation for Trackage Rights

(a) As compensation for the Trackage Rights, User will pay Owner the Base Charge specified in Section 3 of the Agreement to which these

General Conditions pertain. The Base Charge shall be subject to change to reflect any increase or decrease in labor, material and other costs subsequent to the Commencement Date of this Agreement in labor, material and other costs, as more fully set forth below.

(b) All payments called for under this Agreement shall be made by User within thirty (30) 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, but any discrepancies reconciled between 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 hereto.

(c) The Base Charge set forth in Section 3 of the Agreement to which these General Conditions pertain shall be escalated, upward or downward, effective July 1 of each year beginning July 1, 1981, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the final Annual Indexes of Charge-Out Prices and Wage Rates (1967=100), Series Q-MPW; included in "Indexes of Railroad Material Prices and Wage Rates" and supplements thereto, issued by the Association of American Railroads. In making such determination, the final "Material prices, wage rates and supplements combined (excl. fuel) a" index for the Eastern District shall be used and the final index figure for the calendar year 1979 shall be taken as the base. The method of escalating the Base Charge shall be determined by calculating the percent of increase or decrease, in the index of the year to be escalated

as related to the 1979 base, and apply that percent of increase, or decrease, to the Base Charge to obtain the incremental charge. This will be added to or subtracted from the base to establish the escalated Base Charge.

By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excl. fuel) a" final index figure for the calendar year 1979, "B" to be the "Material prices, wage rates and supplements combined (excl. fuel) a" final index figure for the calendar year 1980, "C" to be the Base Charge, "D" to be the percent of increase or decrease, the rate in Section 3 of this Agreement would be determined by the following formula:

$$\frac{B-A}{A} = D$$

(D x C) + C = escalated charge effective
July 1, 1981

In the event the base for the annual Indexes of Charge-Out Prices and Wage Rates issued by the Association of American Railroads shall be changed from the Year 1967, appropriate revision shall be made in the base (established as herein provided) for the calendar year 1979. If the Association of American Railroads 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.

Article 3. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

User shall furnish all labor and material and shall maintain, repair and renew, at its sole cost and expense, such portions

of the tracks which connect the respective lines of the parties at the terminals of the Joint Trackage as are located on the right-of-way of User.

Owner shall furnish all labor and material and shall maintain, repair and renew, at the sole cost and expense of User, the portions of the track connections between said tracks of the parties hereto, located on the right-of-way of Owner.

Any other connections or facilities already existing and used jointly 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 under existing agreements or practices.

Article 4. ADDITIONS, RETIREMENTS AND ALTERATIONS

Owner, from time to time, may make such changes in, additions to or retirements from the Joint 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 shall become a part of the Joint Trackage and such retirements shall be excluded from the Joint Trackage.

If the parties mutually agree that changes in or additions to the Joint Trackage, including changes in communication or signal facilities,

are required to accommodate User's operations beyond that required by Owner to accommodate its own operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost of such additions or alterations, including the annual expense of maintaining, repair and renewal of such additional or altered facilities.

Article 5. MAINTENANCE OF TRACKAGE SECTION

Owner shall maintain, repair and renew the Joint Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Joint Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Joint Trackage or that operation thereof will not be interrupted. Furthermore, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Joint Trackage, have or make any claim or demand against Owner 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 or loss of business suffered by User resulting from any such neglect or failure and User shall indemnify, protect, defend and save Owner harmless in these regards.

Owner shall also perform, at the expense of User, such additional maintenance as User may require.

Article 6. MANAGEMENT AND OPERATION

(a) User shall comply with the provisions of the Federal Boiler Inspection Act and the Federal Safety Appliance Act, as amended, and any other laws, regulations or rules, state or federal, respecting the operation, condition, inspection and/or safety of its locomotives and cars while such locomotives and cars are operated over the Joint Trackage. User shall

indemnify, protect, defend and save Owner harmless from all fines, penalties and liabilities imposed upon Owner under any 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 agrees that in its use of the Joint Trackage it will comply in all respects with the operating rules and regulations of Owner, and that the movement of User's trains, locomotives, cars and equipment over the Joint Trackage section shall at all times be subject to the orders of the transportation officers of Owner.

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

In the event that Owner shall conduct an investigation or hearing concerning the violation of any operating rule or practice of Owner by User's employees, User shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by User and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements,

if any, that pertain to User's employee or employees required to attend such hearings.

Owner shall not be prohibited from barring from the Joint Trackage any employee of User, not including officers, determined by Owner, as the result of such investigation or hearing described above, to be in violation of Owner's rules, regulations, orders, practices or instructions issued by Timetable or otherwise.

It is understood that the trains, locomotives, cars and equipment of User and Owner shall be operated without prejudice or partiality to either party and in such manner as will afford each party the most economical and efficient manner of movement of its traffic.

(c) If by any reason of mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, or to properly move the disabled equipment off the Joint Trackage section, and User shall reimburse Owner for the cost of rendering any such assistance.

If it becomes necessary to make repairs to, or to adjust or transfer the lading of, such crippled or defective cars in order to move them off the Joint Trackage, such work shall be done by forces of Owner, and User shall reimburse Owner for the cost thereof in accordance with the

then current Code of Rules of the Association of American Railroads.

Article 7. PER DIEM

All mileage and per diem charges accruing on cars in User's trains on the Joint Trackage shall be assumed by User and reported and paid by it direct to the owner of such cars.

Article 8. CLEARING OF WRECKS

Whenever User's use of the Joint Trackage requires wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track and structures, and the cost and expense thereof shall be apportioned in accordance with the provisions of Article 9 hereof. All cars and equipment, and salvage from the same, so picked up and removed which is owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

Article 9. LIABILITY

Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of one party only being involved, that party shall assume all liability therefor, and all cost and expense in connection therewith, and shall indemnify, defend and save the other party harmless from any such liability, cost and expense. When any such loss, damage, destruction, injury or death occurs with the trains, locomotives, cars or equipment of both parties being involved, each party agrees to assume all liability for loss of or damage to said trains, locomotives, cars or equipment operated by it (including lading) and for injury to or death of its sole employees and persons in its care and custody, and

the parties further agree that injury to or death of any other person or persons whomsoever, and loss, damage or destruction of all other property (including the Joint Trackage so occurring, shall be borne equally by them. The foregoing provisions shall apply regardless of considerations of fault or negligence.

In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee 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 such compensation, if such compensation is required to be paid in installments over a period of time, such parties 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.

Article 10. PAYMENT OF BILLS

(a) Bills rendered pursuant to the provisions of this agreement, other than those provided by Article 2 hereof, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals in effect at the time any work is performed by Owner, as specified in the then current Rules Covering Preparation of Joint Facility and Other Bills Between Carriers and the Schedule of Equipment Rental and Other Rental Rates for Use Between Carriers, promulgated by the General Managers Association of Chicago or its successor organization.

(b) In the event that Owner and User mutually agree that Owner should hire additional employees for the sole benefit of User under this

Agreement, User will enter into a separate agreement with Owner under which User will assume all obligations for protection of any such employees in the event of their subsequent displacement during the term of or upon termination of this Agreement.

Article 11. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of the User to perform its obligations under this Agreement, and its continuance in such default for a period of sixty (60) days, 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 the Owner of any prior breach thereof, to terminate the use of the facilities by the User and in the exercise of such right the Owner shall not impair its rights under this Agreement or any rights of action against the User for the recovery of damages.

Article 12. TERM

(a) This Agreement shall continue in full force and effect for a period of thirty (30) years from said Commencement Date, provided, however, that User shall have the right on giving twelve (12) months advance notice to Owner, to terminate this Agreement.

(b) User shall have the right to renew its rights for an additional thirty (30) year term (subject to User's right to terminate, as above) by giving written notice thereof to Owner at least six (6) months before expiration of the initial term; upon the exercise of that option, the parties shall, in good faith, renegotiate the terms and conditions under which the rights are exercised, and shall adjust them as may be reasonable

and equitable in the light of any changed circumstances arising during the initial term.

(c) If Owner secures proper regulatory authority to discontinue its own operations over or to abandon the Joint Trackage (or any portion thereof), Owner shall not abandon the Joint Trackage (or portion thereof) without first giving User the right of first refusal to purchase it for its then fair market value. Such option must be exercised by User within sixty (60) days after Owner gives notice to User of its desire to abandon the Joint Trackage (or portion thereof).

Article 13. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective lessees, successors and assigns, and shall continue for the term aforesaid, unless and until terminated by giving notice as aforesaid, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed, or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof. Neither party hereto shall assign or transfer this Agreement or any of its rights hereunder, without obtaining the prior written consent of the other party, except that the rights granted by this Agreement shall pass to the successor of substantially all the property or franchise of Owner.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized

as of the day and year first above written.

ATTEST:

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

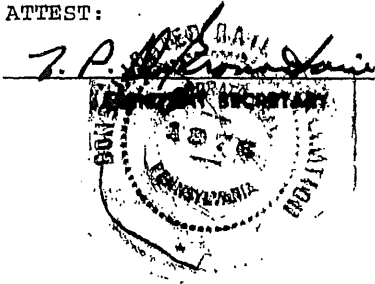
By T. C. Rayburn

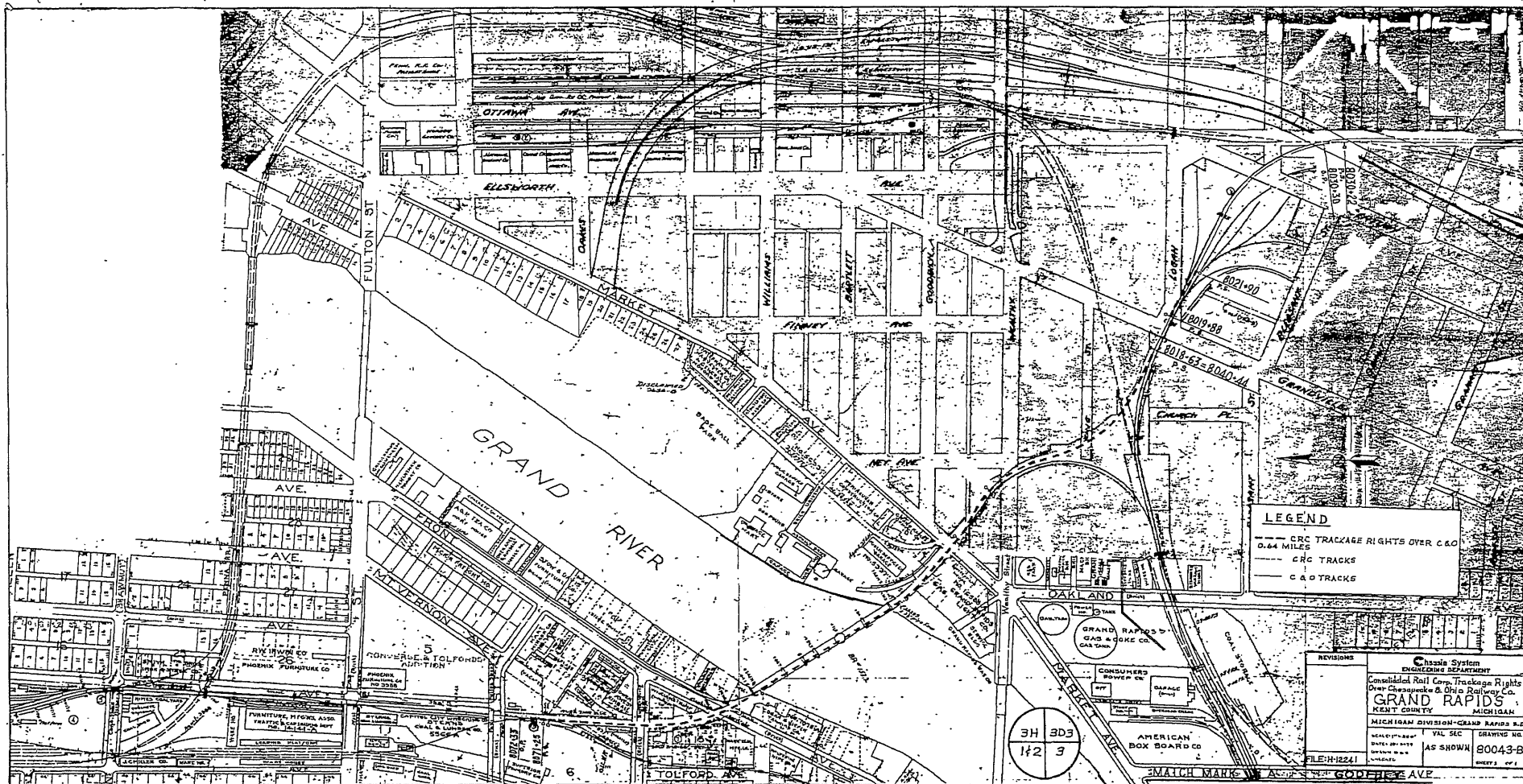
And, as to
Legal Form

ATTEST:

CONSOLIDATED RAIL CORPORATION

By Stuart M. Reed
PRESIDENT





236 207

CONRAIL®

MEMORANDUM

G-4C Rev 11-90



DATE: July 22, 1993

TO: G. J. Hall

LOCATION: Island Ave.

FROM: *John D. Corrao*
R. P. Carey

LOCATION: 14-C

SUBJECT: Registry of Supplemental Agreement with CSXT, Grand Rapids, MI. Registry No. 236207.

Attached for registry is a fully executed original supplement with CSXT dated July 6, 1993, providing for Conrail's use of CSXT trackage between Pleasant Street Interlocker and Grandville Avenue, Grand Rapids, MI.

Please arrange for distribution accordingly.

000021

THIS SUPPLEMENTAL AGREEMENT, made this 6th day of July, 1993, by and between CSX TRANSPORTATION, INC., hereinafter referred to as "Owner", and CONSOLIDATED RAIL CORPORATION, hereinafter referred to as "User";

WITNESSETH:

WHEREAS, The Chesapeake and Ohio Railway Company, predecessor of Owner, and User entered into an agreement dated February 6, 1980, hereinafter referred to as the "Agreement", wherein Owner granted User the right to operate User's locomotives, cars and trains over Owner's tracks between Grandville Avenue and Butterworth and Fulton Streets, Grand Rapids, Michigan; and

WHEREAS, User presently operates its locomotives, cars and trains over Owner's tracks between the eastern terminus of User's trackage rights at Grandville Avenue, as defined in the Agreement, and the point of connection of Owner's and User's tracks in the vicinity of Pleasant Street, Grand Rapids, Michigan pursuant to an agreement dated March 1, 1915 between the Pere Marquette Railroad Company, predecessor of Owner, and The Grand Rapids & Indiana Railway Company, predecessor of User; and

WHEREAS, Owner and User desire to incorporate User's trackage rights, as provided for under the terms and conditions

of the March 1, 1915 agreement, into the Agreement dated February 6, 1980, and thus terminate the March 1, 1915 agreement;

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

1. "Section 1" of the Agreement is hereby amended to include the following trackage of Owner's railroad as Joint Trackage as shown on Drawing No. A-921008, dated October 8, 1992, revised October 19, 1992, attached hereto and made a part hereof as Exhibit II:

- (c) Between the Point of Switch at Valuation Station 8018+63 near Grandville Avenue and the Point of Switch of Owner's new crossover at Valuation Station 8019+88, a distance of approximately 125 feet; and
- (d) From the Point of Switch of Owner's new crossover at Valuation Station 8021+90 easterly to the property line between Owner and User at Valuation Station 8033+40 near Pleasant Street, a distance of approximately 1150 feet.

2. Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired and renewed by and at

the expense of the party or parties responsible for such maintenance, repair and renewal under such agreement or practices.

3. Should this Supplemental Agreement require Interstate Commerce Commission's (ICC) approval or exemption from the requirement to obtain such approval, then, User, at its own cost and expense, will initiate and hereafter diligently pursue an appropriate application or petition to secure such ICC approval or exemption, and this Supplemental Agreement shall take effect on the effective date such ICC approval or exemption is secured. In the event that such ICC approval or exemption is not required, this Supplemental Agreement shall take effect on the date first above written. Owner will assist and support efforts of User to secure any necessary ICC approval of this Supplemental Agreement.

4. This Supplemental Agreement shall terminate the March 1, 1915 agreement as of the effective date hereof; however, termination of the March 1, 1915 agreement does not relieve or release either party hereto from any obligation assumed by it or from any liability which may have arisen or been incurred by either party under the terms of the March 1, 1915 agreement during the term thereof.

5. Except as herein supplemented and amended, the Agreement dated February 6, 1980 is in all respects reaffirmed.

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

WITNESS:

G. W. Roth

CSX TRANSPORTATION, INC.

R. L. Huchard
(Title) Assistant Vice President
Joint Facilities

WITNESS:

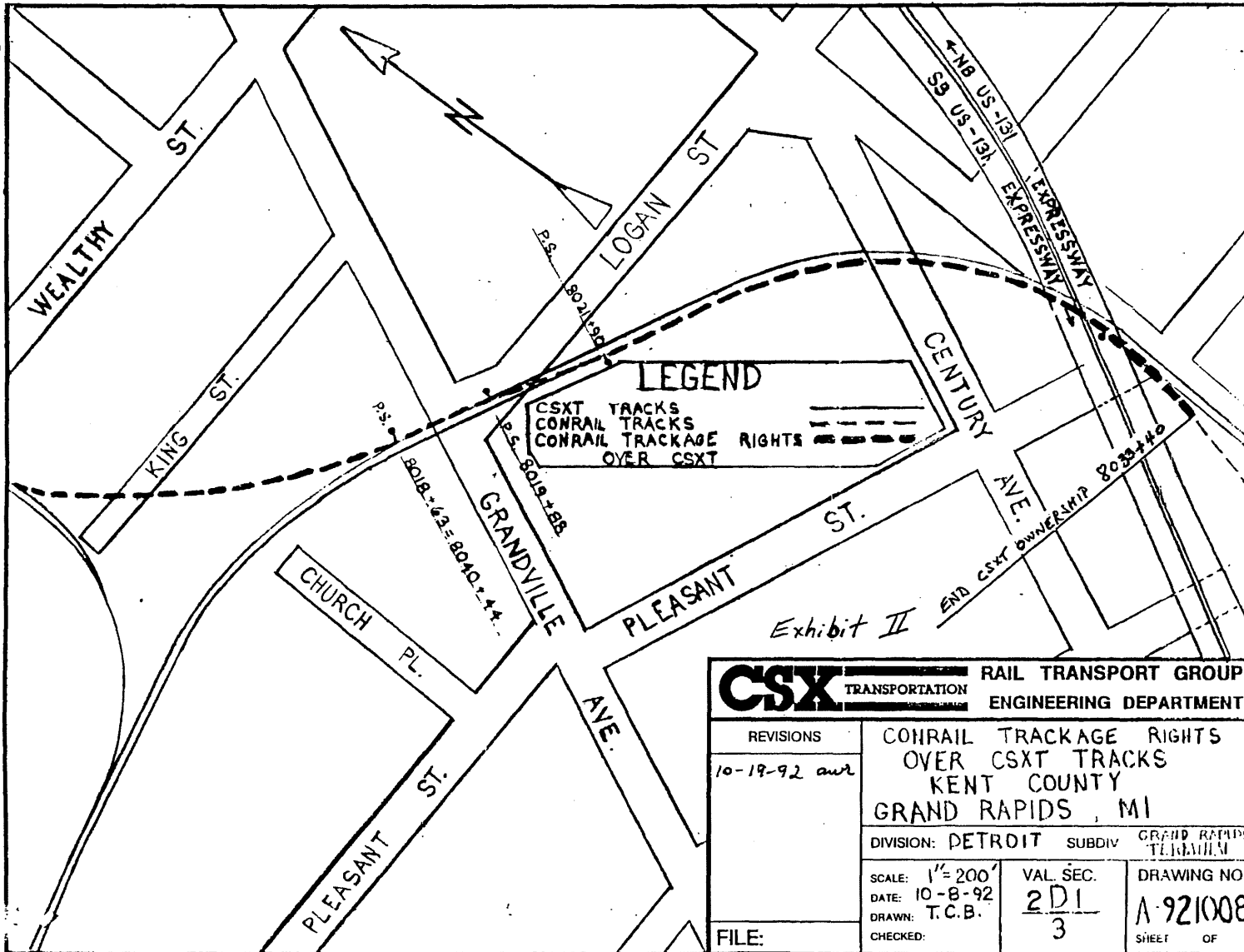
W. D. Bayliff

CONSOLIDATED RAIL CORPORATION

W. D. Bayliff
(Title)

Approved as to legal form

Charles M. Rosenberger
Charles M. Rosenberger



CSX TRANSPORTATION		RAIL TRANSPORT GROUP ENGINEERING DEPARTMENT	
REVISIONS 10-19-92 <i>awl</i>		CONRAIL TRackage RIGHTS OVER CSXT TRACKS KENT COUNTY GRAND RAPIDS, MI	
DIVISION: DETROIT		SUBDIV: GRAND RAPIDS TERMINAL	DRAWING NO. A-921008
SCALE: 1" = 200' DATE: 10-8-92 DRAWN: T.C.B.		VAL. SEC. 201 3	SHEET OF
FILE:		CHECKED:	

Agreement
Registry No. 267 254

AGREEMENT

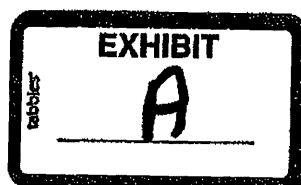
Dated as of January 24, 1984
between

THE CHESAPEAKE & OHIO RAILWAY COMPANY

and

CONSOLIDATED RAIL CORPORATION

Relating to Trackage Rights Over
Each Other's Lines in Grand Rapids, MI.



TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this 24th day of January, 1984, by and between THE CHESAPEAKE & OHIO RAILWAY COMPANY ("C&O") and CONSOLIDATED RAIL CORPORATION ("Conrail").

WHEREAS, under an agreement dated February 6, 1980, the C&O and Conrail agreed to consolidate their operations over approximately .64 of a mile of C&O's track west of the Pleasant Street Interlocking, Grand Rapids, MI ("Phase I"); and

WHEREAS, the City of Grand Rapids, MI has proposed a further consolidation of C&O's and Conrail's tracks within the City of Grand Rapids, MI between C&O's Valuation Station 8071+35±, near Butterworth and Fulton Streets, and Valuation Station 8200+75±, north of Ann Street ("Phase II"), which track consolidation will allow for the retirement and removal of Conrail's track from a point near Lake Michigan Street to a point north of Ann Street and provide for rail connections near Ninth, Leonard, Richmond, and Ann Streets, Grand Rapids, MI; and

WHEREAS, as a result of this Phase II consolidation it will be necessary for C&O and Conrail to operate over one another's trackage; and

WHEREAS, C&O (former Pere Marquette Railway Company), Conrail (former Pennsylvania Railroad Company) and the Grand Trunk Western Railroad Company ("GTW"), entered into an agreement dated January 2, 1934 to provide for the

installation and maintenance of crossing gates protecting the grade crossings of C&O and Conrail tracks with the main track of the GTW and for the maintenance, repair and renewal of the flashing light signal protection at Broadway (Ann Street); and

WHEREAS, C&O and Conrail agree to negotiate with the GTW to amend the January 2, 1934 agreement to exclude Conrail inasmuch as Conrail's tracks referred to in the January 2, 1934 agreement shall be removed.

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

SECTION 1. DEFINITIONS

(a) "Owner" shall mean Conrail when referring to Conrail Rail Properties and shall mean C&O when referring to C&O Rail Properties.

(b) "User" shall mean Conrail when referring to C&O Rail Properties and shall mean C&O when referring to Conrail Rail Properties.

(c) "Parties" shall mean Conrail and C&O.

(d) "Conrail Rail Properties" shall mean the rail properties, including additions and betterments thereto, identified herein in Section 2(b) hereof.

(e) "C&O Rail Properties" shall mean the rail properties, including additions and betterments thereto, identified herein in Section 2(a) hereof.

SECTION 2. GRANT OF TRACKAGE RIGHTS

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

(a) Conrail over C&O - C&O Rail Properties

The Joint Trackage extends from C&O's Valuation Station 8071+35±, near Butterworth Street, to Valuation Station 8200+75±, north of Ann Street, a distance of approximately 2.45 miles, including use of the following connections: (i) between 9th Street and 11th Street at Valuation Station 8144+78± (the "9th Street Connection") (ii) between 11th Street and Leonard Street at Valuation Station 8147+00± (the "Leonard Street Connection") (iii) between Richmond Street and Ann Street at Valuation Station 8185+50± (The "Richmond Street Connection") (iv) north of Ann Street at Valuation Street 8200+75± (the "Ann Street Connection"), all in Grand Rapids, MI.

(b) C&O over Conrail - Conrail Rail Properties

Approximately 1,000 feet of Conrail's tracks between and including the Richmond Street Connection and the connection with the GTW.

SECTION 3. GENERAL CONDITIONS - FORM A.

Except as otherwise may be provided herein, this Agreement is subject to and shall be governed by the "General Conditions - Form A", pages A-1 through A-24, of even date herewith attached hereto, made a part hereof and incorporated herein by reference with the same force and effect as if set forth at length herein.

SECTION 4. 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 as shown below (hereinafter referred to as the "Base Charge"):

(i) Ten Thousand Dollars (\$10,000) annually for the Trackage Rights described in Section 2(a) to be paid by Conrail to C&O.

(ii) Five Hundred Dollars (\$500) annually for the Trackage Rights described in Section 2 (b) to be paid by C&O to Conrail.

(b) The Base Charge in (i) above is predicated upon C&O being reimbursed for Conrail operating approximately 18,000 units over the Joint Trackage in any consecutive twelve (12) month period, a unit being each locomotive car (loaded or empty) or caboose handled by Conrail over the Joint Trackage. If there is a twenty percent (20%) variation in the 18,000 units operated by Conrail over the Joint Trackage in any consecutive twelve (12) month period, either party hereto may request renegotiation of the Base Charge referred to in (i). The party requesting renegotiation of the Base Charge will furnish necessary documentation to support the request. In the event the parties fail to reach agreement upon such renegotiation, such failure

shall not constitute a breach of this Agreement and the parties shall continue to be bound by the terms of compensation provided under Section 4(a) and Article 2 for the remainder of the term of this Agreement.

(c) The Base Charge referred to in Section 4(a)(i) and (ii) shall be revised in accordance with Article 2 of the General Conditions.

SECTION 5. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS.

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

(b) Any additional connections to the Joint Trackage which may be required by User shall be constructed, maintained, repaired and renewed as follows:

(i) User 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 User which connect the respective lines of the parties hereto; and

(ii) Owner shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.

SECTION 6. 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, or by such other means as the parties may mutually agree, and shall be addressed as follows:

(a) If to C&O:

Vice President-Transportation
The Chesapeake and Ohio Railway Company
100 North Charles Street
Baltimore, Maryland 21201

(b) If to Conrail:

Senior Vice President-Operations
Consolidated Rail Corporation
6 Penn Center Plaza
Philadelphia, Pennsylvania 19104

(c) Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 7. RESTRICTION ON USE.

The Trackage Rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the termini of the Joint Trackage and User shall not perform any local freight service whatever at any point located on the Joint Trackage, except Conrail shall have the right to use the proposed additional connections: 9th Street Connection, the Leonard Street Connection, the Richmond Street Connection, and the Ann Street Connection to serve industries situated west of the Joint Trackage.

SECTION 8. TERM.

(a) This Agreement shall continue in full force and effect for a period of thirty (30) years from the Commencement Date, as hereinafter defined; provided, however, that User shall have the right to terminate that portion of this Agreement pertaining to its Trackage Rights over Owner upon giving twelve (12) months' advance written notice to Owner. Such termination will not affect the Trackage Rights of the other User over Owner and shall not relieve or release either party hereto from any obligations assumed 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.

(b) User shall have the right to renew this Agreement for one (1) additional thirty (30) year term, subject

to User's above-stated right to terminate, by giving written notice thereof to Owner not more than twelve (12) months and not less than six (6) months prior to expiration of the initial term of this Agreement.

(c) Upon the giving by User of the notice referred to in paragraph (b) above, the parties shall, in good faith, renegotiate the terms and conditions of this Agreement, and shall adjust such terms and conditions as may be reasonable and equitable in light of any changed circumstances during the initial term of this Agreement. In the event the parties fail to reach agreement upon such renegotiation, then such failure shall not constitute a breach of this Agreement and the terms and conditions of this Agreement shall remain in full force and effect for the remainder of the initial term and for the renewed term of this Agreement.

SECTION 9. MISCELLANEOUS SPECIAL PROVISIONS

(a) Conrail and C&O agree that the subject grants of trackage rights and the related abandonment of Conrail's line is for the purpose of accommodating the development plans of the City of Grand Rapids. Therefore, it is the intention of both Conrail and C&O that the existing switching rights of the respective carriers shall, insofar as possible, remain the same after the consummation of the subject trackage rights and the related abandonment.

(b) C&O's use of the Richmond Street Connection and Conrail's trackage referred to in Section 2 of this Agreement will be for the sole purpose of C&O reaching the GTW's Westside Yard for the purpose of interchanging with the GTW.

(c) The agreement of October 23, 1942, between Conrail (former Pennsylvania Railroad Company) and C&O (former Pere Marquette Railway Company) providing for the maintenance and operation of highway-crossing flashing light signals at Bridge, First, Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, Eleventh, Leonard, Crosby, Myrtle, Webster and Richmond Streets in the City of Grand Rapids, MI is hereby terminated effective with the Commencement Date, as hereinafter defined; provided, however, that said termination shall not relieve or release either party there- to from any obligations assumed or from any liability which assumed or from any liability which may have arisen or been incurred by either party under the terms of said agreement prior to the termination thereof.

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

WITNESS:

THE CHESAPEAKE & OHIO RAILWAY
COMPANY

Antonio Martinez By: F. W. Young, Jr.

WITNESS:

CONSOLIDATED RAIL CORPORATION

Phyllis E. Pearson By: C. E. Wogan
General Manager-Contracts

Printed as to
Legal Form *RW*

GENERAL CONDITIONS-FORM ADATED: January 24, 1984

TO TRACKAGE RIGHTS AGREEMENT DATED AS OF January 24, 1984
BETWEEN THE CHESAPEAKE & OHIO RAILWAY COMPANY AND CONSOLI-
DATED RAIL CORPORATION relating to trackage rights over one
another's tracks in Grand Rapids, MI.

ARTICLE 1. USE OF JOINT TRACKAGE.

(a) User's use of the Joint Trackage shall be in common with Owner and any other user of the Joint Trackage, and Owner's right to use the Joint Trackage shall not be diminished by this Agreement. Owner shall retain the right to grant to other persons rights of any nature in the Joint Trackage.

(b) User shall not use any part of the Joint Trackage for the purpose of switching (except as provided in Sections 7 and 9 herein), storage of 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 tracks as may be designated by Owner for such purpose.

(c) Owner shall have exclusive control of the management and operation of the Joint Trackage.

(d) Unless otherwise stated in the Agreement to which these conditions pertain, User shall have the

right to operate in either direction over the Joint Track-
age.

ARTICLE 2. REVISION OF BASE CHARGE.

(a) The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

(b) The Base Charge set forth in Section 4 of this Agreement shall be revised effective July 1 of each year, beginning July 1, 1984, to compensate for 75% of the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Recovery Index" and supplements thereto, issued by the Association of American Railroads. In making such determination, the final "Material prices, wage rates and supplements combined (excl. fuel)" index for the Eastern District shall be used and the final index figure for the calendar year 1982, hereinafter referred to as the "Base Calendar Year", shall be taken as the base. The Base Charge shall be revised by calculating the percentage of increase, or decrease, in the index of the year to be escalated as related to the Base Calendar Year; then multiplying this percentage of increase or decrease by 75%; and applying that percentage to the Base Charge.

(c) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the Base Calendar Year; "B" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the calendar year to be escalated; "C" to be the Base Charge; "D" to be the percentage of increase or decrease; and "E" to be the adjusted revised percentage of increase or decrease, the revised Base Charge would be determined by the following formula:

$$(1) \frac{B - A}{A} = D$$

$$(2) D \times 75\% = E$$

$$(3) (C \times E) + C = \text{revised Base Charge,}$$

rounded to the nearest cent (5 mills rounds to next cent), effective July 1 of the year being escalated.

(d) In the event the base for the Annual Indices of Charge-Out Prices and Wage Rates issued by the Association of American Railroads shall be changed from the year 1977, appropriate revision shall be made in the Base Calendar Year. If the Association of American Railroads or any successor organization discontinues publication of the Annual Indices 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 matter will be referred to the Interstate Commerce Commission for determination. In the event said Commission is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

ARTICLE 3. ADDITIONS, RETIREMENTS AND ALTERATIONS.

(a) Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, or retirements from the Joint 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 Joint Trackage and such retirements shall be excluded from the Joint Trackage.

(b) If the parties agree that changes in or additions and betterments to the Joint Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its own 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.

ARTICLE 4. MAINTENANCE OF JOINT TRACKAGE.

(a) Owner shall maintain, repair, and renew the Joint Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Joint Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Joint Trackage or that operations thereover will not be interrupted. Furthermore, except as may be otherwise provided in Article 8 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Joint Trackage, have or make any claim or demand against Owner or its 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 also perform, at the expense of User, such additional maintenance as User may request.

ARTICLE 5. MANAGEMENT AND OPERATION.

(a) User shall comply with the provisions of the Federal Boiler Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal, state and local laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Joint Trackage. User shall indemnify, protect, defend, and save harmless Owner and its officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its officers, agents, or 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 Joint Trackage will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Joint Trackage shall at all times be subject to the orders of the transportation officers of Owner.

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

(d) In the event Owner conducts an investigation or hearing concerning the violation of any operating rule or practice of Owner by an employee or employees of User, User shall be notified in advance of any such investigation or hearing and such investigation or hearing may be attended by any official designated by User and shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to said employee or employees.

(e) Owner shall have the right to exclude from the Joint Trackage any employee of User, except officers, determined by Owner, as the result of such investigation or hearing described above, to be in violation of Owner's rules, regulations, orders, practices, or instructions issued by Timetable or otherwise. User shall release, indemnify, defend, and save harmless Owner and its offi-

cers, agents, and employees from and against any and all claims and expenses resulting from such exclusion.

(f) The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Joint Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(g) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Joint Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

(h) 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 Joint Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

(i) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, 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 additional employees not been provided.

ARTICLE 6. MILEAGE AND CAR HIRE.

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

ARTICLE 7. CLEARING OF WRECKS.

Whenever User's use of the Joint Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform 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, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Article 8 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 User at the time of such wreck shall be promptly delivered to it.

ARTICLE 8. LIABILITY.

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

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, only User being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Article 7 hereof, and shall forever protect, defend, indemnify, and save harmless Owner and its officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner or its officers, agents or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, only Owner being involved, Owner shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Article 7 hereof, and shall forever protect, defend, indemnify, and save harmless User and its officers, agents, and employees from and against any such liability, cost, and expense regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of User or its officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their officers, agents, and employees, and persons in each of their care and custody, and all liability, cost, and expense for injury to and death of any other person or per-

sons whomsoever, and for loss of, damage to, and destruction of all other property (including without limitation the Joint Trackage) so occurring shall be borne equally by Owner and User, including without limitation all cost and expense referred to in Article 7 hereof. 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 offices, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the indemnitee or its officers, agents or employees.

(d) Except as provided in paragraph (e) below, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of, both User and any other user of the Joint Trackage being involved, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner, User, or any other user of the Joint Trackage or their officers, agents, or employees, then any such other user shall be considered as Owner for the purpose of determining between the parties to this Agreement User's

assumption and apportionment of liability, cost and expense under paragraph (c) above.

(e) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, Owner, User, and any other user being involved, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner, User, or any other user of the Joint Trackage or their officers, agents, or employees, then Owner and such other user shall be jointly considered as Owner and a single party to this Agreement for the purpose of determining the assumption and apportionment of liability, cost, and expense between the parties to this Agreement under paragraph (c) above.

(f) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, without the trains, locomotives, cars, or equipment of, or in the account of, any other user being involved, and in the event such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s),

locomotive(s), car(s), or caboose(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Article 7 hereof, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its officers, agents, and employees from and against any such liability, cost, and expense.

(g) In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties, under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(h) For purposes of this Article 8, pilots furnished by Owner to User pursuant to Article 5(c) of this Agreement shall be considered as the employees of User while such pilots are on board or getting on or off trains of User.

(i) Notwithstanding the provisions of Article 14(f) of this Agreement, for the purposes of this Article 8 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Joint Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Joint Trackage or its right-of-way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

ARTICLE 9. INVESTIGATION.

(a) Except as provided in subarticle (b) hereof, all claims, injuries, deaths, or property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with Section 11707 of the Interstate Commerce Act.

(c) 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.

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

(e) Excluding freight loss and damage claims filed in accordance with Section 11707 of the Interstate Commerce Act, 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 Ten Thousand Dollars (\$10,000).

(f) It is understood that nothing in this Article shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Article 8 hereof.

ARTICLE 10. PAYMENT OF BILLS.

(a) All payments called for under this Agreement shall be made by User within thirty (30) 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 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.

(b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4 hereof, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals which the parties hereto may agree upon at the time any work is performed for User by Owner.

ARTICLE 11. 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 Joint Trackage. 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 12. REGULATORY APPROVAL.

Should this Agreement require the prior approval of the Interstate Commerce Commission, User at its own cost and expense will initiate and thereafter diligently prosecute an appropriate application or petition to secure such approval and this Agreement shall take effect after such approval has been secured on the date User commences operations over the Joint Trackage (herein referred to as the "Commencement Date"). The Commencement Date shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto. In the event Interstate Commerce Commission approval is not required, the Commencement Date shall be the date agreed upon by the parties hereto as evidenced by an exchange of correspondence referred to above. Owner will assist and support efforts of User to secure Interstate Commerce Commission approval of this Agreement.

ARTICLE 13. ABANDONMENT OF JOINT TRACKAGE.

(a) Notwithstanding the provisions of Section 8 of this Agreement, Owner shall have the right, subject to securing any necessary regulatory approval, to abandon the Joint Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, Owner shall give User 90 days' advance notice in writing of its intention to do so in order that User may determine whether it desires to purchase the Joint Trackage (or portion thereof) or to discontinue its use thereof.

(b) If User desires to purchase the Joint Trackage, it shall submit an offer of financial assistance under 49 U.S.C. Section 10905 (or, in the event Conrail is the Owner, an offer of financial assistance under 49 U.S.C. Section 10905 and 45 U.S.C. Section 748, where applicable). In the event the offer meets the requirements of the aforesaid sections and Owner receives more than one such offer, Owner will exercise its statutory right to negotiate with User rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to User's acquisition of the Joint Trackage shall be governed by applicable provisions of the law.

(c) In any one of the circumstances listed below User shall be deemed to have determined that it does not desire to purchase the Joint Trackage and that it desires to discontinue its use thereof:

- (1) User fails to submit an offer of financial assistance to purchase the Joint Trackage within the time prescribed by statute and applicable regulations, or
- (2) User, having made an offer of financial assistance to purchase the Joint Trackage, but being unable to reach agreement with Owner as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
- (3) User, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
- (4) User, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms or terms within the time prescribed by said order.

In such event Owner shall be deemed to have been given User's power of attorney to file an application with the proper regulatory authority seeking approval of the discontinuance of User's operations over the Joint Trackage.

(d) In the event any application filed by Owner is granted but an application filed by Owner on behalf of User under subsection (c) above is denied by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Joint Trackage to User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10905.

(e) In the event Owner abandons any portion (or all) of the Joint Trackage under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that User either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10905 as interpreted on the date of this Agreement.

(f) In the event Owner's application for authority to abandon is denied, Owner will withdraw any application it has filed on behalf of User under subsection (c) above.

(g) Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under Article 13 result in an obligation imposed by any competent authority on either or both parties hereto 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.

(h) In the event that either C&O or Conrail conveys its Joint Trackage to the other party to this Agreement in accordance with the provisions of this Article

13 and in the event that the party hereto so conveying its Joint Trackage to the other party hereto also conveys its line of railroad adjacent to such Joint Trackage to another person, firm or corporation for continued rail service, then the party hereto acquiring the Joint Trackage shall grant trackage rights over such Joint Trackage to such other person, firm or corporation upon substantially the same terms and conditions as are contained in this Agreement.

ARTICLE 14. GENERAL PROVISIONS.

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section and Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

(e) 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.

(f) 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.

ARTICLE 15. SUCCESSORS AND ASSIGNS.

This Agreement shall apply to and bind the successors and assigns of the parties hereto, including, but not limited to, the successors and assigns of Owner's interest in the Joint Trackage or any portion thereof. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement,

provided, however, that such consent shall not be necessary if such transfer or assignment is to a successor of all or substantially all of the rail properties of the parties hereto or to a successor or assign of Owner's interest in the Joint Trackage or any portion thereof.

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (this "Agreement") is made as of this 1st day of December 2017 (the "Effective Date"), between CSX Transportation, Inc. ("CSXT"), a Virginia corporation with offices at 500 Water St., Jacksonville, FL 32202, and Grand Elk Railroad, Inc. ("GDLK"), a Michigan corporation with offices at 315 W 3rd St., Pittsburg, KS 66762.

WHEREAS, GDLK leased a line of railroad from Norfolk Southern Railway Company ("NSR") including lines in Grand Rapids, MI;

WHEREAS, the parties now operate lines of railroad that connect with each other in Grand Rapids, MI;

WHEREAS, the parties are involved in litigation before the US Surface Transportation Board ("STB") and the 17th Judicial Circuit Court for Kent County Michigan (the "Circuit Court") related to that certain Grand Rapids Assignment and Assumption Agreement between NSR and GDLK dated as of March 5, 2009, a copy of which is attached hereto as Exhibit A (the "Assignment Agreement");

WHEREAS, on November 20, 2017, STB ordered CSXT to permit GDLK to operate over certain of its lines in or near Grand Rapids extending from the connection with the Hughart Running Track at approximately CSXT milepost CH 151.3± at Pleasant Street through milepost CH 151.6/CGE 0.0 to milepost CGE 3.0± north of Ann Street, a distance of approximately 3.3 route miles (the "CSXT Line") pending resolution of certain issues before the Circuit Court;

WHEREAS, the time period for CSXT to appeal the STB's November 20, 2017 decision has not yet run; and

WHEREAS, the parties now wish to enter into an agreement resolving all pending issues between them, establishing the terms governing operations over the trackage described below and avoiding future disputes;

NOW THEREFORE, the parties agree as follows:

1. The parties incorporate by reference the following agreements (collectively, the "Trackage Rights Agreements"):
 - a. that certain Trackage Rights Agreement dated as of February 6, 1980, between the Chesapeake and Ohio Railway Company and Consolidated Rail Corporation (the "1980 Agreement");
 - b. that certain Trackage Rights Agreement dated as of January 24, 1984, between the Chesapeake & Ohio Railway Company and Consolidated Rail Corporation (the "1984 Agreement"); and
 - c. that certain Supplemental Agreement dated July 6, 1993, between CSX Transportation, Inc. and Consolidated Rail Corporation.

2. The terms and conditions of the Trackage Rights Agreements shall govern the use of the Joint Trackage, as defined in the Trackage Rights Agreements as the context may require, as if:

- a. NSR's rights under the Trackage Rights Agreements had been lawfully assigned to GDLK by NSR (as successor in interest to Consolidated Rail Corporation ("Conrail")) and assumed by GDLK, effective March 5, 2009, and therefore prior to their respective expirations, *provided, however*, that nothing in this Agreement shall be construed to alter, modify or amend GDLK's obligations to CSXT as assumed from NSR under the 1984 Agreement;
- b. Subject to Section 3c. of this Agreement, the Trackage Rights Agreements had been extended more than six months prior to their expiration dates for additional 30-year terms as provided in (i) Article 12, Term in General Conditions – Form A of the 1980 Agreement and (ii) in Section 8, Term, of the 1984 Agreement, respectively;
- c. the defined terms "User" and "Owner" shall be construed to refer to GDLK, NSR and CSXT as the context requires to give effect to the assignment contemplated by the Assignment Agreement, and

3. The Trackage Rights Agreements are amended as follows:

a. Compensation.

- i. The 1980 Agreement is amended by deleting Section 3 (addressing Base Charges) in its entirety and replacing it with the following:

Conrail shall pay [] (the "Trackage Rights Fee") to C&O as compensation for use of the Joint Trackage.¹

- ii. The 1984 Agreement is amended by deleting Section 4(a) (addressing Base Charges) in its entirety and replacing it with the following:

The User shall pay [] (the "Trackage Rights Fee") to the Owner as compensation for the use of the properties described in Section 2(a) and (b).²

- b. Adjustment. The 1980 Agreement is further amended by deleting Article 2(c) of General Conditions – Form A in its entirety and the 1984 Agreement is, likewise, further amended by deleting Sections 4(b) and (c) in their entirety (each of which addresses adjustment of the Base Charges) and replacing the deleted passages with the following:

¹ [Redacted].

² [Redacted].

- i. The Trackage Rights Fee shall be adjusted upward or downward on an annual basis, beginning March 1, 2019, by multiplying the then-current Trackage Rights Fee by an annual adjustment factor derived from the Surface Transportation Board's Rail Cost Adjustment Factor, Unadjusted for Productivity (the "RCAF-U"). The annual adjustment factor will be derived by dividing the latest available quarterly RCAF-U index by the same index for the corresponding quarter of the previous year. (Both index numbers will be calculated using the latest base available.) The resulting annual adjustment factor will be rounded to the third decimal place. The Trackage Rights Fee in effect immediately prior to the annual update will then be multiplied by the annual adjustment factor to determine the amount(s) of the adjusted per car or locomotive amounts. The Trackage Rights Fee may not go below \$0.60 per car or locomotive per mile, but may not be increased above that amount until the annual RCAF-U index number exceeds the RCAF-U index number in effect on December 1, 2017. Should the RCAF-U index be re-based, the re-based series will be used to calculate the annual adjustments. If the RCAF-U is discontinued, the parties will negotiate in good faith to agree upon a substitute provision. If no agreement is reached within 30 days after negotiations start, CSXT may elect either (1) to seek arbitration of a substitute index that most closely reflects the factors considered by RCAF-U or (2) to substitute for the RCAF-U the Producer Price Index (Finished Goods) published by the U.S. Department of Labor.
- c. Term. Notwithstanding Section 2b. of this Agreement, Article 12 of General Conditions – Form A of the 1980 Agreement is amended by deleting Article 12(b) in its entirety and replacing it with the following:
 - i. This Agreement has been renewed by the parties and shall continue in full force and effect through and including December 4, 2037, subject to User's above stated right to terminate. User shall have the right to renew this Agreement for one (1) additional twenty (20) year term by giving at least six (6) months advance written notice to Owner. Such additional twenty (20) year term shall also be subject to User's above stated right to terminate.

Further, Section 8 of the 1984 Agreement is amended by deleting Section 8(b) in its entirety and replacing it with the following:

- ii. This Agreement has been renewed by the parties and shall continue in full force and effect through and including December 4, 2037, subject to User's above stated right to terminate. User shall have the right to renew this Agreement for one (1) additional twenty (20) year term by giving at least six (6) months advance written notice to Owner. Such additional twenty (20) year term shall also be subject to User's above stated right to terminate.

- d. Passenger. General Conditions – Form A of the 1980 Agreement is amended by adding a new Article 14 and the 1984 Agreement is amended by adding a new Section 10, in each case as follows:
 - i. NO PASSENGER RAIL USE. The rights granted hereunder are for freight rail transportation purposes only. C&O retains the exclusive right to authorize and/or operate passenger, commuter, special, or excursion trains over the Joint Trackage.
4. Within five (5) business days of the Effective Date, GDLK shall stipulate to the dismissal of all proceedings and claims for relief in Case No. 2016-07855-CZB before the Circuit Court with prejudice. CSXT shall forebear from seeking reconsideration of, appealing, or otherwise challenging the STB's decision of November 20, 2017, in Docket No. FD 35187 (Sub-No. 1), Docket No. FD 36127, and Docket No. FD 36127 (Sub-No. 1). On or before December 4, 2017, GDLK and CSXT shall jointly notify the STB that GDLK has commenced operations on the CSXT Line; that the parties have entered into this Agreement to effectuate the assignment of the Trackage Rights Agreements as herein amended; shall supply to the STB under seal, a copy of this Agreement and the related Trackage Rights Agreements to establish for the records the terms pursuant to which GDLK's STB-authorized trackage rights operations will be carried out as of December 4, 2017; and they shall request that the STB, upon receiving these agreements, thereupon terminate all of the above-listed proceedings.
5. The parties on behalf of themselves and each of their predecessors, parents, subsidiaries, affiliates, related entities, owners, employees, officers, directors, assignors and agents, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby completely release and forever discharge each other and their parents, subsidiaries, affiliates, related entities, management companies, and their respective owners, employees, officers, directors, agents and attorneys from any and all claims, demands, obligations, actions, causes of action, damages, costs, losses, fees (including any past unpaid trackage rights fees due and owing to either party from before December 4, 2017) and expenses of any nature whatsoever, whether based on a tort, contract, statute, or otherwise, which they now have on account of, or in any way growing out of, or which are or could have been the subject of, or relating to the matters involved in the STB proceedings listed above and the Circuit Court proceedings as of the Effective Date; ***provided, however***, that this release and discharge shall not affect the rights of the parties to enforce the terms and conditions of this Agreement.
6. Each party hereto shall bear its own attorneys' fees and costs related to this Agreement and shall not pursue any claim for such expenses from the other party.
7. This Agreement shall be construed and interpreted in accordance with the laws of the State of Michigan, without regard to its choice of law provisions, and in accordance with applicable federal transportation law.
8. GDLK shall succeed to NSR's rights and obligations under the additional agreements identified in the Assignment Agreement as if such agreements had been lawfully assigned

to GDLK by NSR (as successor in interest to Conrail) and assumed by GDLK, effective March 5, 2009, specifically (i) that certain trackage rights agreement, dated December 23, 1964, by and between the C&O, the Pennndel Company, and the Pennsylvania Railroad Company, as it has been from time to time amended and assigned, and the operation of the Godfrey Mill Spur in Grand Rapids, MI; (ii) that certain interlocking agreement, dated June 1, 1994, by and between CSXT and Conrail, as it has been from time to time amended and assigned; and (iii) that certain interchange agreement, dated December 18, 1989, by and between CSXT and Conrail, as it has been from time to time amended and assigned (collectively, the “Other Joint Facility Agreements”).

9. Prior to the commencement of operations on the Line by GDLK, GDLK shall furnish CSXT a letter from NSR:
 - a. confirming NSR’s intent to have assigned its rights under the Trackage Rights Agreements and the Other Joint Facility Agreements to GDLK effective March 5, 2009;
 - b. confirming that NSR has leased to GDLK the Conrail Rail Properties as defined in the 1984 Agreement;
 - c. acknowledging that, due to assignment of its rights to GDLK deemed effective March 5, 2009, NSR currently does not have trackage rights over CSXT property included in the Joint Trackage described in the Trackage Rights Agreements;
 - d. acknowledging further that CSXT has agreed to consent to the assignment back to NSR of the rights, and assumption by NSR of the obligations, assigned to GDLK by NSR under the Trackage Rights Agreements, as amended herein, if the lease between NSR and GDLK referenced in Surface Transportation Board Docket FD 35187 (served November 17, 2008) is terminated for any reason; provided, however, that upon such assignment back to NSR, NSR shall have the one-time option, exercisable within thirty (30) days of the assignment back, to revert to the original compensation terms and provisions for both User and Owner in both, but not one or the other, of the 1980 and 1984 Agreements as if they had never been amended by this Agreement;
 - e. acknowledging that any future amendments to the Trackage Rights Agreements by GDLK and CSXT will not be binding on NSR in the event of assignment back to NSR absent NSR’s consent;
 - f. confirming that NSR stipulates to the dismissal with prejudice to all claims in the Circuit Court and the discontinuance by CSXT and GDLK of all STB proceedings referenced in this Agreement; and
 - g. confirming that NSR will release CSXT on the same terms as Section 5 hereof in return for CSXT’s similar release of NSR. A draft of the NSR letter, to be countersigned by CSXT, satisfying this Section 8, is attached as Exhibit B.

10. This Agreement contains the entire agreement among the parties with regard to the matters set forth herein, and supersedes any and all prior representations, promises, understandings and agreements. There are no inducements to enter into this Agreement which are not set forth herein. This Agreement is in compromise of disputed claims and shall not constitute admissions by any party.

(signature page follows)

IN WITNESS WHEREOF, the parties have caused this Settlement and Release Agreement to be duly executed as of the Effective Date.

GRAND ELK RAILROAD, INC.

Kirk Hawley

By: Kirk Hawley

Its: SUPservice Solutions / Joint Facilities

Date: 12-01-17

CSX TRANSPORTATION, INC.

By: _____

Its: _____

Date: _____

(signature page to Settlement and Release Agreement)

IN WITNESS WHEREOF, the parties have caused this Settlement and Release Agreement to be duly executed as of the Effective Date.

GRAND ELK RAILROAD, INC.

By: _____

Its: _____

Date: _____

CSX TRANSPORTATION, INC.

Anthony DiDio

By: Anthony DiDio

Its: Director Joint Facilities

Date: 12/1/2017

(signature page to Settlement and Release Agreement)

Exhibit A
Assignment Agreement

GRAND RAPIDS ASSIGNMENT AND ASSUMPTION AGREEMENT

This **GRAND RAPIDS ASSIGNMENT AND ASSUMPTION AGREEMENT** (this "Agreement") is dated as of the fifth day of March, 2009 by and between Norfolk Southern Railway Company, a Virginia corporation ("Assignor"), and Grand Elk Railroad, LLC, a Delaware limited liability company ("Assignee"). All capitalized terms used but not otherwise defined in this Agreement shall have the meaning ascribed to such terms in the Lease Agreement between Assignee and Assignor, dated December 29, 2008 (the "Lease").

RECITALS:

WHEREAS, there exists that certain trackage rights agreement, dated January 24, 1984, by and between The Chesapeake & Ohio Railway Company ("C&O") and Consolidated Rail Corporation (Conrail), as it has been from time to time amended and assigned, and the underlying right of movements in and about Grand Rapids, MI (the "1984 Agreement"); and

WHEREAS, there exists that certain trackage rights agreement, dated February 6, 1980, by and between the C&O and Conrail, as it has been from time to time amended and assigned, and the underlying right of movements in and about Grand Rapids, MI (the "1980 Agreement"); and

WHEREAS, there exists that certain interlocking agreement, dated June 1, 1994, by and between CSX, Transportation, Inc. ("CSXT") and Conrail, as it has been from time to time amended and assigned, and the underlying right of movements in and about Grand Rapids, MI (the "1994 Agreement"); and

WHEREAS, there exists that certain trackage rights agreement, dated July 6, 1993, by and between the C&O and Conrail, as it has been from time to time amended and assigned, and the underlying right of movements in and about Grand Rapids, MI (the "1993 Agreement"); and

WHEREAS, there exists that certain trackage rights agreement, dated December 23, 1964, by and between the C&O, the Pennel Company and the Pennsylvania Railroad Company, as it has been from time to time amended and assigned, and the operation of the Godfrey Mill Spur in Grand Rapids, MI (the "1964 Agreement"); and

WHEREAS, there exists that certain interchange agreement, dated December 18, 1989, by and between CSXT and Conrail, as it has been from time to time amended and assigned, and the interchange of traffic at Grand Rapids, MI (the "1989 Agreement"); and

WHEREAS, on the terms and subject to the conditions set forth in the Lease, Assignor agreed to assign the 1984 Agreement, the 1980 Agreement, the 1994 Agreement, the 1993

Agreement, the 1964 Agreement and the 1989 Agreement (collectively the "Grand Rapids Joint Facility Agreements") to Assignee, upon receiving consent from CSXT, successor to C&O; and

WHEREAS, CSXT has consented to such assignment; and

WHEREAS, Assignee desires to accept such assignment.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and agreements contained herein and in the Lease, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Assignment. Assignor hereby contributes, assigns, sets over and transfers to Assignee, its Joint Facility Agreements.

Section 2. Assumption. Assignee hereby accepts the assignment of all of Assignor's right, title and interest in, to and under the Grand Rapids Joint Facility Agreements.

Section 3. Effect of the Assignment and Assumption. All rights and responsibilities under the Grand Rapids Joint Facility Agreements accruing prior to the effectiveness of this Agreement shall be the rights and responsibilities of Assignor. All rights and responsibilities under the Grand Rapids Joint Facilities Agreements accruing after the effectiveness of this Agreement shall be the rights and responsibilities of Assignee.

Section 4. The Lease Agreement. Nothing herein shall be deemed to amend, modify, alter, expand or diminish the terms and conditions of the Lease Agreement, including, without limitation, the covenants, representations, warranties and indemnification obligations contained therein.

Section 5. Further Assurances. Assignor shall, from time to time upon the reasonable request of Assignee, execute and deliver all such further documents and instruments, and take all such further acts as shall be necessary or desirable to give full effect to the intent and meaning of this Agreement.

Section 6. Governing Law. The laws of the state of Delaware shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties arising hereunder, without regard to the laws that might otherwise govern under the applicable principles of conflicts of law thereof.

Section 7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 8. Successors and Assigns. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns,

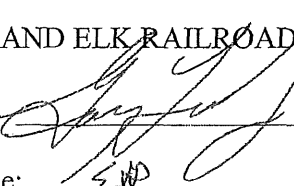
and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, interests, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

NORFOLK SOUTHERN RAILWAY COMPANY

By: 
Title: Vice President

GRAND ELK RAILROAD, L.L.C.

By: 
Title: 



Norfolk Southern Corporation
Network and Service Management
1200 Peachtree Street NE
Atlanta, Georgia 30309

Randall W. Hunt
Director Joint Facilities
O: (404) 529-1813
C: (412) 807-9085
F: (757) 823-5927
e-mail: rwhunt@nscorp.com

December 2, 2017

Tony DiDeo
Director Joint Facilities
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32224

Re. Trackage Rights Agreements / Grand Rapids, MI

Dear Tony:

We refer to that certain Settlement and Release Agreement (the "Agreement") between CSX Transportation, Inc. ("CSXT") and Grand Elk Railroad, Inc. ("GDLK") resolving the issues that have arisen between the parties and in satisfaction of the Surface Transportation Board's decision served November 20, 2017 related to the following agreements (collectively, the "Trackage Rights Agreements"):

- a. that certain Trackage Rights Agreement dated as of February 6, 1980, between the Chesapeake and Ohio Railway Company and Consolidated Rail Corporation,
- b. that certain Trackage Rights Agreement dated as of January 24, 1984, between the Chesapeake & Ohio Railway Company and Consolidated Rail Corporation, and
- c. that certain Supplemental Agreement dated July 6, 1993, between CSX Transportation, Inc. and Consolidated Rail Corporation.

This letter is written pursuant to Section 8 of the Agreement and reflects Norfolk Southern Railway Company's ("NSR") confirmation of the following:

- a. NSR intended to have assigned its rights under the Trackage Rights Agreements, as well as those other agreements listed in the Grand Rapids Assignment and Assumption Agreement dated March 5, 2009, between NSR and GDLK, to GDLK effective March 5, 2009;
- b. NSR has leased to GDLK the Conrail Rail Properties as defined in the Trackage Rights Agreement dated January 24, 1984;
- c. Due to assignment of its rights to GDLK deemed effective March 5, 2009, NSR currently does not have trackage rights over CSXT property included in the Joint Trackage described in the Trackage Rights Agreements;

d. Further, that by signing below, CSXT has agreed to consent to the assignment back to NSR of the rights, and assumption by NSR of the obligations, assigned to GDLK by NSR under the Trackage Rights Agreements, as amended herein, if the lease between NSR and GDLK referenced in Surface Transportation Board Docket FD 35187 (served November 17, 2008) is terminated for any reason; provided, however, that upon such assignment back to NSR, NSR shall have the one-time option, exercisable within thirty (30) days of the assignment back, to revert to the original compensation terms and provisions for both User and Owner in both, but not one or the other, of the 1980 and 1984 agreements as if they had never been amended by the Agreement;

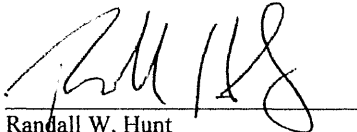
e. Any future amendments to the Trackage Rights Agreements by GDLK and CSXT will not be binding on NSR in the event of assignment back to NSR absent NSR's consent;

f. NSR stipulates to the dismissal with prejudice to all claims in Case No. 2016-07855-CZB pending in the 17th Judicial Circuit Court for Kent County Michigan.

Additionally, subject to CSXT's countersignature below, NSR and CSXT, on behalf of themselves and each of their predecessors, parents, subsidiaries, affiliates, related entities, owners, employees, officers, directors, assignors and agents, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby completely release and forever discharge each other and their parents, subsidiaries, affiliates, related entities, management companies, and their respective owners, employees, officers, directors, agents and attorneys from any and all claims, demands, obligations, actions, causes of action, damages, costs, losses, fees (including any past unpaid trackage rights fees due and owing to either party from before December 4, 2017) and expenses of any nature whatsoever, whether based on a tort, contract, statute, or otherwise, which they now have on account of, or in any way growing out of, or which are or could have been the subject of, or relating to the matters involved in the STB proceedings listed in the Agreement and the Circuit Court proceedings as of the Effective Date.

Very truly yours,

Norfolk Southern Railway Company



Randall W. Hunt
Director Joint Facilities

cc: Grand Elk Railroad, Inc.

Acknowledged and Agreed


CSX Transportation, Inc.
Anthony DiDeo
Director Joint Facilities

**Docket No. FD 35187 (Sub-No. 1),
*Grand Elk Railroad, Inc. – Acquisition of Incidental Trackage
Rights Exemption -- Norfolk Southern Railway Company***

APPENDIX

MOTION FOR PROTECTIVE ORDER

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35187 (Sub-No. 1)

GRAND ELK RAILROAD, INC.
– ACQUISITION OF INCIDENTAL TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY

**JOINT MOTION FOR PROTECTIVE ORDER OF
GRAND ELK RAILROAD, INC. AND CSX TRANSPORTATION INC.**

Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR GRAND ELK
RAILROAD, INC.**

Louis E. Gitomer
Law Offices of Lou Gitomer
600 Baltimore Ave.
Towson, MD
(202) 466-6532

**ATTORNEY FOR CSX
TRANSPORTATION, INC.**

Dated: December 4, 2017

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35187 (Sub-No. 1)

GRAND ELK RAILROAD, INC.
– ACQUISITION OF INCIDENTAL TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY

**JOINT MOTION FOR PROTECTIVE ORDER OF
GRAND ELK RAILROAD, INC., AND CSX TRANSPORTATION, INC.**

Pursuant to 49 C.F.R. § 1104.14(b), Grand Elk Railroad, Inc. (“Grand Elk”) and CSX Transportation, Inc. (“CSX”) (collectively, “the Parties”) hereby request that the Board issue a protective order allowing the Parties to file under seal the executed, un-redacted Settlement Agreement dated as of December 1, 2017 between Grand Elk and CSX Transportation, Inc. (“CSXT”) pertaining to the subject of the captioned proceedings.

GDLK and CSXT have entered into a Settlement and Release Agreement effective as of December 1, 2017 (the “Settlement and Release Agreement”), pursuant to which GDLK’s trackage rights operations over certain railroad lines of CSXT will be restored. The Settlement and Release Agreement modifies, as appropriate, and otherwise provides for the assignment of two trackage rights agreements – one dated as of February 6, 1980 (as supplemented as of July 6, 1993), and the other dated as of January 24, 1984 – from Norfolk Southern Railway Company (“NSR”) to GDLK as incidental to a lease transaction authorized by the Board in Docket No. FD 35187. The parties seek to add the subject trackage rights agreements and the related Settlement and Release Agreement to the record in this proceeding,

and, to that end, offer an un-redacted version of the Settlement and Agreement under seal subject to this request for a protective order.

The Settlement and Release Agreement contains commercially sensitive and confidential information, the public release of which could cause competitive or other injury to GDLK and CSXT. Accordingly, GDLK and CSXT request that the Board accept the un-redacted Settlement and Release Agreement for filing under seal, and issue the proposed Protective Order appended hereto (See Appendix). The issuance of the requested protected order is consistent with agency precedent. See, e.g., Chicago, Central & Pacific Railroad Company -- Trackage Rights Exemption -- Cedar River Railroad Company, Docket No. FD 35563 (STB served Dec. 30, 2011); The Kansas City Southern Railway Company -- Trackage Rights Exemption -- Illinois Central Railroad Company, Docket No. FD 34309 (STB served Feb. 4, 2003).

WHEREFORE, GDLK and CSXT respectfully request that the Board to adopt the Protective Order appended hereto.

Respectfully submitted,

By: R.A. Wimbish

Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR GRAND ELK
RAILROAD, INC.**

By: Louis E. Gitomer / RAV

Louis E. Gitomer
Law Offices of Lou Gitomer
600 Baltimore Ave.
Towson, MD
(202) 466-6532

ATTORNEY FOR CSX TRANSPORTATION, INC.

Dated: December 4, 2017

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “Confidential Information” means the un-redacted Settlement and Release Agreement between Grand Elk Railroad, Inc. (“Grand Elk”) and CSX Transportation, Inc.. (“CSXT”) filed under seal on December 4, 2017, under Docket No. FD 35187 (Sub-No. 1).

2. Confidential Information shall be provided to any party (defined as the identified parties, including Norfolk Southern Railway Company; and any persons assisting a party in its business or legal affairs with a reasonable need-to-know) only pursuant to this Protective Order and only upon execution and delivery to Grand Elk and CSXT of the attached Undertaking by the recipient party. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial or other competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any non-party without the written consent of Grand Elk and CSXT or an order of the Board, and then solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on Grand Elk and CSXT, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.

5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 CFR § 1104.14.

6. If any party intends to use Confidential Information at hearings or otherwise in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any filings or documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at any hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.

7. All parties must file simultaneously a public version of any Confidential submission filed with the Board. The Confidential version may be served on other parties in electronic format only.

8. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

I, _____, have read the Protective Order governing the filing of Confidential Information by Grand Elk Railroad, Inc. ("Grand Elk") and CSX Transportation, Inc. ("CSXT") in STB Docket No. FD 35187 (Sub-No. 1), and I understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. FD 35187 (Sub-No. 1) or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof. At the conclusion of this proceeding (including any proceeding on administrative review, judicial review or remand), I will promptly destroy any documents containing or reflecting Confidential Information, other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that Grand Elk or CSXT shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

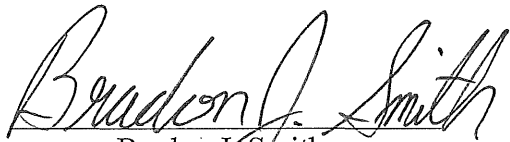
Signature: _____

Position: _____

Affiliation: _____

CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of December, 2017, a copy of the foregoing **Joint Motion for Protective Order of Grand Elk Railroad, Inc. and CSX Transportation, Inc.** was served by U.S. Mail, first class postage prepaid, or by more expeditious means of delivery, upon all parties of record.



Bradon J. Smith