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BEFORE THE
SURFACE TRANSPORTATION BOARD



AB 1271
STB Finance Docket No. ~~FD 35611 (Sub No. 1)~~

246805

SAVAGE, BINGHAM & GARFIELD RAILROAD COMPANY
– TRACKAGE RIGHTS EXEMPTION –
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

ENTERED
Office of Proceedings
November 21, 2018
Part of
Public Record

VERIFIED PETITION TO REVOKE CLASS EXEMPTION
AND ALLOW TERMINATION OF TRACKAGE RIGHTS

Pursuant to 49 U.S.C. § 10502

NOTE: Color map included in Exhibit 3.

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**SAVAGE, BINGHAM & GARFIELD RAILROAD COMPANY
– TRACKAGE RIGHTS EXEMPTION –
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

**VERIFIED PETITION TO REVOKE CLASS EXEMPTION
AND ALLOW TERMINATION OF TRACKAGE RIGHTS**

Pursuant to 49 U.S.C. § 10502

Savage, Bingham & Garfield Railroad Company (SBGR) hereby petitions the Board pursuant to 49 U.S.C. § 10502 to (i) revoke the class exemption under 49 C.F.R. § 1180.2(d)(7) that authorized SBGR to operate pursuant to a trackage rights agreement entered into between SBGR and Elgin, Joliet and Eastern Railway Company, an indirect rail carrier subsidiary of Canadian National Railway Company (referred to collectively as CN), over a 0.6-mile rail line owned by CN in Whiting, Indiana, and (ii) allow the trackage rights to terminate. The trackage rights agreement allowing SBGR to operate on the line has terminated by its own terms because of a change in the business relationship between the parties, as explained below. The proposed action is consistent with Congress's Rail Transportation Policy, 49 U.S.C. § 10101, and with the Board's prior treatment of similar situations.

A signed Verification by the President of SBGR is attached as Exhibit 1.

Statement of Facts

On March 26, 2012, in the instant docket, SBGR, a Class III rail carrier, filed a Verified Notice of Exemption under the class exemption of 49 C.F.R. § 1180.2(d)(7), to obtain authorization to operate pursuant to trackage rights over a 0.6-mile segment of CN's line in Whiting, Indiana adjacent to CN's rail yard there, as a component of the business relationship among CN, SBGR and non-carrier affiliates of SBGR to provide transportation service to a key customer near the Whiting yard. A copy of the March 2012 trackage rights agreement between SBGR and CN, submitted as part of the Notice of Exemption, is attached as Exhibit 2. For the Board's information, attached as Exhibit 3 is a map of CN's Whiting yard, highlighting the location of the line over which the trackage rights were granted, which is between Milepost J 47.4 (south end of CN's Whiting Yard) and Bridge 631 at or near Milepost J 46.8 on CN's Calumet Spur on CN's Matteson Subdivision, in Whiting, Indiana.

On April 11, 2012, the Board issued its decision confirming the class exemption under 49 C.F.R. § 1180.2(d)(7) and authorizing SBGR's operation over the line pursuant to the trackage rights agreement between SBGR and CN. A copy of the Board's April 11, 2012 decision is attached as Exhibit 4. The transaction took effect April 25, 2012, 30 days after SBGR filed its notice with the Board. SBGR began operations over the line pursuant to the trackage rights agreement at that time.

The business circumstances of this operation have now changed. SBGR's business and contractual arrangement with CN, of which the trackage rights agreement was a part, also included a track lease agreement between CN and a non-carrier affiliate of SBGR for the use of tracks within CN's Whiting Yard for storage of cars by CN's industrial customers. A copy of the track lease agreement is attached as Exhibit 5. SBGR's affiliate handled the non-carrier railcar

storage work within the yard pursuant to the track lease agreement. Because of changes in the shippers' business operations, this car movement and storage work in the Whiting Yard pursuant to the contract with CN has ended. As a result CN cancelled the track lease agreement, as it had the right to do under section 14 of such agreement (Exhibit 5). This caused the trackage rights agreement between CN and SBGR to terminate by its own terms. See section 21.2 of the trackage rights agreement (Exhibit 2) ("This Agreement ... shall automatically terminate upon termination of the Track Lease Agreement"). This occurred on or about August 1, 2018.

Thus, SBGR no longer has any contractual right to operate (and, in fact, does not operate) over CN's line in Whiting pursuant to the trackage rights agreement.

Discussion

The Board has often observed that "trackage rights approved under the class exemption at 49 C.F.R. § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions." *The Indiana R.R. Co. – Trackage Rights Exemption – CSX Transp., Inc.*, at p. 2 (STB Finance Docket No. 36068 (Sub No. 1), decision served Feb. 9, 2017). *See also, e.g., New Orleans Public Belt R.R. Co. – Trackage Rights Exemption – Illinois Cent. R.R. Co.*, at p. 2 (STB Finance Docket No. 36198 (Sub No. 1), decision served June 20, 2018) (same); *Indiana S. R.R. LLC – Temporary Trackage Rights Exemption – Norfolk S. Rwy. Co.*, at pp. 1-2 (STB Finance Docket No. 35965 (Sub No. 1), decision served Nov. 25, 2015) (same).¹

However, in the above decisions and others involving presumptively indefinite trackage rights under the class exemption at 49 C.F.R. § 1180.2(d)(7) – such as SBGR's trackage rights in the instant case – the Board has nevertheless authorized termination of the trackage rights. In the

¹ For the comparable longstanding principle under the Interstate Commerce Act, *see generally Thompson v. Texas Mex. Rwy. Co.*, 328 U.S. 134 (1946) (even where trackage rights agreement was terminated by lessor, cessation of service by lessee pursuant to such trackage rights was an abandonment of rail service requiring ICC authorization).

above decisions, for example, the Board exercised its broad exemption authority under 49 U.S.C. § 10502 and permitted termination of trackage rights when the trackage rights agreements themselves included a specific termination date, and cessation of the trackage rights operations was consistent with the Rail Transportation Policy of 49 U.S.C. § 10101. *See generally* 49 U.S.C. § 10502(a), (d) (Board may exempt any transaction or operation from regulation and allow it to proceed when consistent with the Rail Transportation Policy, including revocation of exemptions previously recognized).

In the instant case, the SBGR-CN trackage rights agreement did not include a stated expiration date, so SBGR could not have filed a simultaneous petition to revoke the exemption under 49 U.S.C. § 10502 to allow future termination (as in the above cases) when the original Notice of Exemption was filed in 2012. However, revocation of the class exemption in this case to allow termination of SBGR's trackage rights in Whiting, Indiana would be consistent with the Rail Transportation Policy, as contemplated by 49 U.S.C. § 10502, and should be allowed in this case.

Since the early days of rail deregulation the courts have recognized that trackage rights agreements in general are among the matters eligible for regulatory exemption under 49 U.S.C. § 10502 and its predecessor provisions. In *Simmons v. Interstate Commerce Comm'n*, 760 F.2d 126, 132 (7th Cir. 1985), *cert. denied*, 474 U.S. 1055 (1986), the Court of Appeals affirmed the ICC's exemption and approval of trackage rights for a small rail carrier with light traffic over a 4.5-mile line, because among other things it satisfied the "limited scope" requirement for exemption under what is now 49 U.S.C. § 10502(a). As the court stated there, "Congress wanted the [rail regulatory] exemption power to be wielded boldly."

These principles support exemption and approval of the cessation of SBGR's trackage rights in Whiting, Indiana now. The proposed termination of trackage rights over a rail line less than one mile long, involving service by a small Class III rail carrier where, because of practical business circumstances (no more railcars being moved), the lessor (CN) has ended the contractual relationships that allowed SBGR to operate, is a matter of "limited scope" under section 10502(a)(2) justifying exemption and approval of terminating the trackage rights. Continued regulation is not necessary to protect shippers under section 10502(a)(2) – in this case it was the customers themselves that ended their operations. In addition, no element of the federal Rail Transportation Policy, 49 U.S.C. § 10101, would be *disserved* by allowing termination of SBGR's trackage rights, and at least the following elements of the Policy would be promoted by the requested termination of the trackage rights:

- Termination would minimize unneeded federal regulatory control over the rail transportation system, in this situation where no party supports continuing SBGR's service pursuant to trackage rights. Section 10101(2).
- Termination would foster sound economic conditions in transportation by not requiring a small rail carrier to maintain and subsidize services that, again, are not wanted or needed by any customer or any other party. Section 10101(3).
- Termination would reduce regulatory barriers to entry and exit from the railroad industry, by allowing SBGR to exit unwanted operations in Whiting, Indiana, and allowing it to devote its resources to entering new or expanded operations elsewhere for customers that seek its rail service. Section 10101(7).

Additional Factors

In support of this petition for exemption and approval of the termination of SBGR's trackage rights, SBGR also notes the following:

- No environmental reporting is required pursuant to 49 C.F.R. § 1105.6(c)(5), because termination of SBGR's trackage rights will have no effect on CN's continuing operation of the rail line at issue, adjacent to its Whiting Yard.
- For the same reason, no historical reporting is required pursuant to 49 C.F.R. § 1105.8(b)(3) because termination of SBGR's trackage rights will not affect CN's own operations over its line.
- SBGR has attempted to mitigate impacts on employees from termination of the trackage rights. Two employees handled the SBGR trackage rights operations in Whiting. Both were offered comparable new positions in the Savage organization, though not necessarily in the same location. One employee has already found work with an unrelated industrial switching company in Whiting. The other employee has elected not to relocate for another Savage job. In trackage rights termination cases similar to this case, the Board has often imposed the employee protective conditions set forth in *Oregon Short Line R.R. – Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

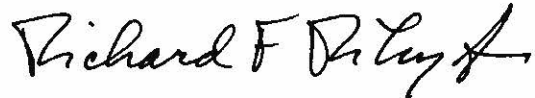
Conclusion

For the reasons stated above, pursuant to 49 U.S.C. § 10502, SBGR petitions the Board to revoke the previously recognized class exemption under 49 C.F.R. § 1180.2(d)(7), and to exempt from regulation and allow the termination of SBGR's trackage rights on CN's line in Whiting,

Indiana, which were originally approved in this docket in the Board's decision served April 11, 2012 (Exhibit 4).

Respectfully submitted,

SAVAGE, BINGHAM & GARFIELD
RAILROAD COMPANY



Date: November 21, 2018

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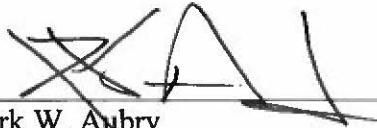
Exhibit 1

VERIFICATION

VERIFICATION

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

Kirk W. Aubry, being duly sworn, deposes and says that he is the President of Savage Bingham & Garfield Railroad Company; that he has read the foregoing Verified Petition to Revoke Class Exemption and Allow Termination of Trackage Rights (STB Finance Docket No. 35611 (Sub No. 1)); and that the facts set forth in such Verified Petition are true and correct to the best of his knowledge and belief.



Kirk W. Aubry
President
Savage Bingham & Garfield Railroad Company

Subscribed and sworn to before me this 15 day of November, 2018.



Notary Public

My Commission expires: 05-02-2019



Exhibit 2

TRACKAGE RIGHTS AGREEMENT

TRACKAGE RIGHTS AGREEMENT

Agreement No. _____

between

**ELGIN, JOLIET AND EASTERN RAILWAY COMPANY
("CN")**

And

**SAVAGE, BINGHAM & GARFIELD RAILROAD COMPANY
("SBG")**

**Relating to SBG'S Limited Trackage Rights Over CN between
129TH St in Whiting, IN and Bridge Number 631 in Whiting, IN on CN's Matteson
Subdivision**

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this ^{27th} day of ^{MARCH} February 2012, by and between the ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, (hereinafter referred to as "CN" or "OWNER") and the SAVAGE, BINGHAM & GARFIELD RAILROAD COMPANY, (hereinafter referred to as "SBG" or "USER").

WHEREAS, CN owns and operates a segment of railroad located between Milepost J 47.4 (South end of CN's Whiting Yard) and Bridge Number 631 ("Bridge 631") at or near Milepost J 46.8 on CN's Calumet Spur located on CN's Matteson Subdivision in Whiting, IN; and

WHEREAS, SBG has requested trackage rights between Milepost J47.4 and Bridge 631 which will allow SBG to move freight traffic for customers in the CN's Whiting Yard on CN's Calumet Spur on CN's Matteson Subdivision in Whiting, IN; and

WHEREAS, CN agrees to grant SBG trackage rights for the movement of freight traffic on CN's segment of railroad between Milepost J 47.4 and Bridge 631 on CN's Calumet Spur on CN's Matteson Subdivision in Whiting, IN, subject to the terms and conditions set forth herein.

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

SECTION 1.0 GRANT OF TRACKAGE RIGHTS

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

- Between CN's Milepost J 47.4 and Bridge Number 631 at or near Milepost 46.8 on CN's Calumet Spur on CN's Matteson Subdivision in Whiting, IN, as shown on Exhibit A including (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto, a distance of approximately 0.6 miles.

SECTION 2.0 USE OF SUBJECT TRACKAGE

2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Except as provided below,

2.2 Except as may otherwise be provided by this Agreement, User has the right to use the Subject Trackage for the purpose of switching and the making or breaking up of trains, and 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.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

2.5 Owner and User shall work together to establish a schedule for the handling of User's trains.

2.6 User shall be responsible for contacting Owners Dispatcher that is in charge of Subject Trackage prior to entering the Subject Trackage. User shall ensure that its trains i) are not staged, held, stored, or parked on the Subject Trackage (except at the direction of Owner), or otherwise unreasonably interfere with the joint use of the Subject Trackage; ii) are staffed with qualified crews that have sufficient hours of service remaining to clear the Subject Trackage; iii) User shall have sufficient fuel for the entire movement on CN; and iv) restore all connection switches for mainline movement on and by Owner as required by Owner.

2.7 Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the User any right or benefit under or by reason of this Agreement.

2.8 User shall not permit or admit any third party unless the third party is an affiliate of User to the use of all or any portion of the Subject Trackage, nor have the right to detour trains of any other railroad over or upon the Subject Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or upon the Subject Trackage.

2.9 SBG at its sole discretion has the right to allow Savage Yard Services Inc. ("SYS"), an affiliate company of SBG to act as its designated Switching contractor to provide switching services for SBG. If SBG elects to use SYS to provide switching services, SBG shall remain fully liable for the actions or inactions of SYS as if the actions or inactions are SBG's for all purposes under this Agreement. CN may assume for all purposes hereunder that any direction, instruction, information or request presented to CN by SBG's switching contractor has been given at the direction and with the knowledge of SBG, and CN shall have no obligation to confirm such direction, instruction, information or request with SBG prior or subsequent to acting on same.

SECTION 3.0 RESTRICTION ON USE

3.1 The trackage rights herein granted are granted for the sole purpose of User using same for freight services between the terminals of Subject Trackage and User shall be allowed to perform local freight service at Whiting Yard but shall not be allowed to serve any customer whatsoever except BP North America in Whiting, IN and customers located within CN's Whiting Yard in Whiting, IN.

SECTION 4.0 LEFT BLANK INTENTIONALLY

SECTION 5.0 PAYMENT OF BILLS

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

5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

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

SECTION 6.0 MAINTENANCE OF SUBJECT TRACKAGE

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum.

SECTION 7.0 CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

7.1 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.

SECTION 8.0 ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

SECTION 9.0 MANAGEMENT AND OPERATIONS

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic

control center or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

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

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, 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.

9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify Owner's Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the

applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Operating Trackage and Interchange Track(s) any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

9.9 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 If Owner requests an investigation, an Officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Operating Trackage or Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee).

9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated on a first come, first service basis without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic. Owner does not guarantee or otherwise promise to provide any particular transit or running times over the Subject Trackage. Further, Owner does not guarantee or otherwise promise that operations over the Subject Trackage will not be interrupted. However, Owner shall make best efforts to ensure that any interruptions will be kept to a minimum.

9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have

the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

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

9.16 In the event Owner and User agree that Owner should retain employees or 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.

SECTION 10 **LEFT BLANK INTENTIONALLY**

SECTION 11.0 **CLEARING OF WRECKS**

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

SECTION 12.0 **LIABILITY**

12.1 The responsibility and liability between the parties, or any company or entity now controlled by either party, for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation) after the Effective Date, and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users after the Effective Date, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss.
- (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both CN and SBG, then: (i) each of CN and SBG is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and

- (ii) CN and SBG are responsible for any Loss to the Subject Trackage and Loss sustained by third parties.
- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both SBG and any other third party user of the Subject trackage not a party to this Agreement, then SBG's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered CN for the purpose of determining SBG's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense to the extent of the liability apportioned to it.
- (e) In every case of death or injury suffered by an employee of any party to this Agreement, 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.
- (f) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- (g) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (h) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (i) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and

employees from and against any and all expense and liability for which User is responsible.

SECTION 13.0 INVESTIGATION AND CLAIMS

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 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.

13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 14.0 DEFAULT AND TERMINATION

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage.

SECTION 15.0 DISPUTE RESOLUTION

15.1 If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement upon which the parties cannot agree, either party shall have the right to require a meeting of designated representatives with authority to settle the matter within 30 days of written notice of a desire to meet; if it cannot be resolved within 30 days of the meeting of the parties, then the aggrieved party may demand arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 15 shall be governed by the rules and procedures set forth in this Section 15. For all purposes, this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, regardless of its conflicts of law's principles.

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

15.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or the American Arbitration Association, as the case may be, shall appoint another to act in the arbitrator's place.

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

15.5 Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and

counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

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

SECTION 16.0 REGULATORY APPROVAL

16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

16.2 Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder., whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

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

SECTION 17.0 ABANDONMENT OF SUBJECT TRACKAGE

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

SECTION 18.0 GENERAL PROVISIONS

18.1 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.

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

18.3 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.

18.4 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.

18.5 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, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or 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.

18.6 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.

18.7 This agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either CN or SBG to any party other than CN's and SBG's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

SECTION 19.0 SUCCESSORS AND ASSIGNS

19.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party (ies) to this Agreement provided, however, such consent shall not be unreasonably withheld.

SECTION 20.0 NOTICE

20.1 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:

If to Owner:

Region Director Contracts and Administration
Chicago, Central & Pacific Railroad Company
17641 South Ashland Avenue
Homewood, IL 60430

If to User:

Savage Bingham & Garfield Railroad Company
ATTN: Group Leader
6340 South 3000 East, Suite 600
Salt Lake City, UT 84121

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

SECTION 21.0

COMMENCEMENT, TERM AND TERMINATION

21.1 This Agreement shall take effect immediately upon the later (i) the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto. The date that User commences operations over the Subject Trackage shall be referred to herein as the "Commencement Date", and shall be evidenced by an exchange of correspondence between the appropriate officers of the parties hereto.

21.2 This Agreement shall run concurrent with the Track Lease Agreement between CN and Savage Management Transportation Company for the lease of tracks in CN's Whiting Yard that is being prepared simultaneously with this Agreement and shall automatically terminate upon termination of the Track lease Agreement.

21.3 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.

21.4 Upon termination or non-renewal of this Agreement, or for any other reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the STB or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS

Marian A. Friend

ELGIN, JOLIET AND EASTERN RAILWAY
COMPANY

By: John E. Merrill

John E. Merrill
Manager Contracts

Date: _____

WITNESS

Juan Brashers

SAVAGE, BINGHAM & GARFIELD
RAILROAD COMPANY

By: Gary L. Plant

Print Name: Gary L. Plant

Its: Sr. V.P.

Date: 3/5/12

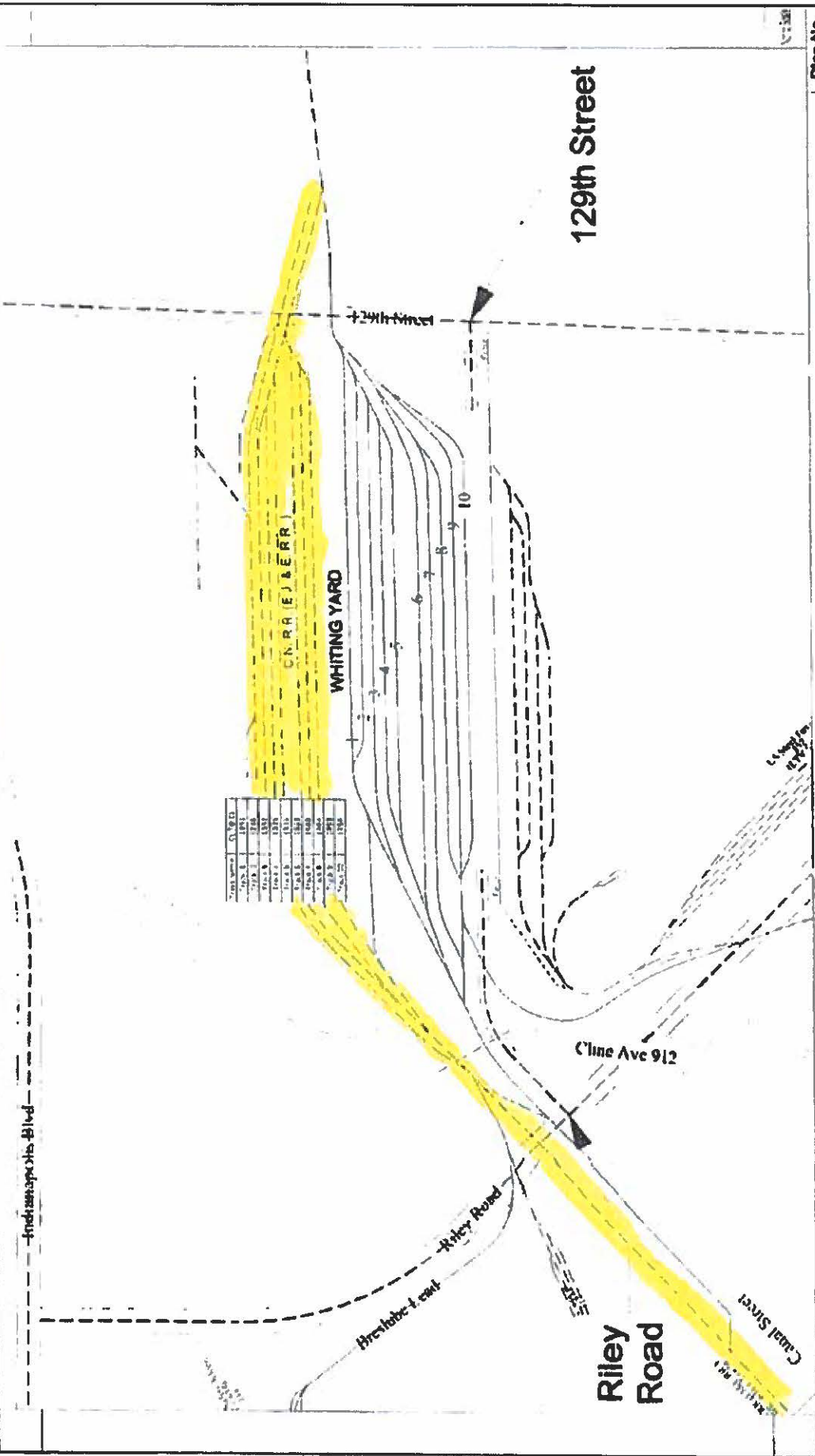
Exhibit 3

MAP

NORTH

EXHIBIT

SOUTH



Plan No.
6711 U11

53013

Exhibit 4

STB DECISION SERVED APRIL 11, 2012

42311

SERVICE DATE – APRIL 11, 2012

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35611]

Savage, Bingham & Garfield Railroad Company—Trackage Rights Exemption—Elgin,
Joliet and Eastern Railway Company

Pursuant to a written trackage rights agreement dated March 5, 2012, Elgin, Joliet and Eastern Railway Company (CN),¹ has agreed to grant limited overhead trackage rights to Savage, Bingham & Garfield Railroad Company (SBG) over approximately 0.6 miles of rail line between milepost J 47.4 (south end of CN's Whiting Yard) and Bridge Number 631 at or near milepost J 46.8 on CN's Calumet Spur on CN's Matteson Subdivision in Whiting, Ind.

The transaction is scheduled to be consummated on April 25, 2012, the effective date of the exemption (30 days after the exemption was filed).

The purpose of the transaction is to allow SBG to move freight for customers in CN's Whiting Yard on CN's Matteson Subdivision.

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

¹ Elgin, Joliet and Eastern Railway Company is an indirect subsidiary of Canadian National Railway Company.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed by April 18, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35611, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on David T. Ralston, Jr., Foley & Lardner LLP, 3000 K Street, N.W., Washington, DC 20007.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: April 3, 2012.

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

Exhibit 5

TRACK LEASE AGREEMENT

TRACK LEASE FOR SWITCHING AND STORAGE OF CARS

^{96M} This LEASE AGREEMENT ("Agreement") made and entered into this 5th day of MARCH 2012 (the "Effective Date") and by and between **ELGIN, JOLIET & EASTERN RAILWAY COMPANY** ("LESSOR") and **SAVAGE YARD SERVICES INC.**, hereinafter collectively referred to as ("LESSEE").

WHEREAS, the parties hereto desire to enter into a track lease agreement to define their respective, duties and obligations with respect to the ownership, maintenance and operation of said track.

Now therefore, the parties hereto, in consideration of the covenants and conditions contained herein, the parties agree as follows:

1. Track and Demised Property. LESSOR hereby leases to LESSEE the nonexclusive right to use LESSOR's tracks 1 through 6 (approximately 14,834 lineal feet), and 221+ lineal feet of the lead track on the north end of LESSOR's Whiting Yard for a total of approximately 15,055 lineal feet, together with the land upon which said tracks are situated ("Tracks"), at LESSOR's Whiting Yard at Whiting, IN on the LESSOR's Eastern Subdivision as shown on Exhibit "A" attached and made a part hereof.

2. Use of Track. The nonexclusive right granted herein is for the use solely by LESSEE for the switching and storage of loaded and empty railcars ("Cars"), which have been delivered to LESSEE and for no other purpose. The demised Tracks are shown on Exhibit "A". LESSEE shall not place any material, structure, equipment or other obstruction on the Track or permit any other person or firm to use the Track.

LESSOR shall deliver Cars destined to Whiting Yard and to BP Products North America ("BP") to LESSEE at the south end of the Tracks, and such delivery shall constitute full delivery to LESSEE.

LESSEE shall deliver Cars that have been pulled from BP and Cars that have been switched out of Tracks in Whiting Yard that have been way billed to another destination to LESSOR on the south end of Tracks so that LESSOR can pick up cars without having to switch out Cars, and such delivery shall constitute full delivery to LESSOR.

LESSOR will be responsible to ensure the Tracks are designated as Yard Tracks. LESSEE acknowledges and agrees that LESSEE will not move beyond or shove Cars beyond the clearance point at the south end of the Tracks.

In the event that LESSEE uses its own motive power equipment to move railroad cars over the Track, in no case shall movement be permitted unless LESSEE's equipment is properly equipped with a standard railroad car coupling device, commonly referred to as a knuckle, and said device is securely fastened to LESSEE's equipment and properly in use. LESSEE's equipment shall be of sufficient strength to be able to move and stop in a safe manner any cars, loaded or empty, coupled to the device for movement.

LESSEE shall use the 221 feet at the north end of the yard for the sole purpose of moving Cars to and from the Tracks and to reach BP and at no time shall any Cars be left on the lead at the north end of the Tracks.

LESSEE in its use of said Tracks will comply in all respects with the operating rules and regulations of LESSOR, which have been given to LESSEE, and the movement of LESSEE's trains, locomotives, Cars, and equipment over said Tracks shall at all times be subject to the reasonable orders of the transportation officers of LESSOR.

In no event shall any device be used by LESSEE for the loading or unloading of cars placed on Track, unless mutually agreed upon between the parties of this agreement, including but not limited to conveyor, movable platform, or vacuator, all of which shall hereafter be called the "Equipment". LESSEE shall at all times keep any movable unit of the Equipment and all parts thereof safely and firmly located in place to provide at least the clearances as specified below in this Section 2 hereof, except when actually using same in the unloading of cars.

LESSEE agrees that no excavation, building structure, platforms, obstruction or Equipment of any kind shall be placed, erected or permitted nearer than 8.5 feet laterally of the center line, or within 23 feet vertically from the top of the rail of Track.

LESSOR, immediately prior to the Effective Date, shall ensure that the Tracks are free of debris, waste and any vegetation that may interfere with the safe use of the Tracks. Thereafter, LESSEE shall maintain Track free of debris and waste that may interfere with the safe use of Track, and in compliance with applicable laws, rules and regulations which may apply, including but not limited to Bureau of Explosives Circular No. 17, and shall dispose of said debris in accordance with applicable governmental rules, laws and regulations

3. Damage, Vandalism, Clean Up, etc. LESSEE shall be responsible for any damage it causes to the Cars on the Track, including clean up costs or other costs of damages related directly or indirectly to leakage, spill or other emission from, or fire caused by, the product contained in the Cars. LESSEE will not be responsible for any damage, destruction of the Cars on the Track, including damage, defacement, vandalism, or destruction caused by LESSOR or any third parties. LESSEE will inspect inbound cars delivered by LESSOR for damage or defective mechanisms. LESSOR will address inbounds defective cars at LESSOR'S cost.

4. Term. The term of this Agreement shall commence on the 2nd day of APRIL 2012 and shall be for one year in duration ("Term"). The lease shall automatically renew for additional one year terms starting on APRIL 6 2013 and shall remain in effect until terminated by either party as provided in Paragraph 13 of this Agreement.

5. Rent. For rental of the Track during the Term of this Agreement, LESSEE shall pay as rent the sum of One Dollar (\$1.00).

6. Switching and Demurrage. The use by the LESSEE of the Track for its own purposes shall in no way alter or affect rates, charges, or terms of any other transportation service. Charges for switching the Cars within the terminal area shall be assessed under the appropriate contract and/or published tariffs, and the private Cars shall be subject to the application of Demurrage Rules and Charges, except when held upon the Track. In the case of railroad-owned Cars, demurrage rules and charges will apply from the time that Cars are placed upon the Track.

7. Acceptance of Track by LESSEE; Cost of Repairs, Maintenance, etc. LESSOR makes no warranty or representation, either express or implied, as to the condition of Track and

LESSEE accepts Track as is, subject to a joint inspection, it being agreed that all risks with respect to the use of Track are assumed by LESSEE. A joint inspection, by representatives of both parties, of the Tracks will be performed prior to the effective date of the Track lease. Any defects will be corrected within a reasonable time frame by LESSOR. Notwithstanding the foregoing, LESSOR represents that all permits and authorizations required for the legal use by LESSEE of the Tracks pursuant to this Agreement have been obtained by LESSOR and are in full force and effect. Any and all improvements, repairs and maintenance thereof necessary for LESSEE'S use and operation thereof shall be performed by LESSOR at LESSOR'S expense. LESSEE will provide to LESSOR any track exceptions detailing poor track conditions and LESSOR will make the appropriate repairs in a reasonable time frame as to not hinder the services LESSEE agrees to perform under the Operating Agreement. LESSEE will not operate on track that is in need of repair until such repairs are made by LESSOR at LESSOR's sole expense.

LESSOR shall, at its expense, cause [Consultant] to conduct a Phase I and Phase II environmental site assessment of the Tracks and issue a report with respect thereto in a manner, and with a scope of work, reasonably acceptable to LESSEE, and will provide copies thereof to LESSEE. Such report will serve as a baseline environmental study indicative, but not conclusive of the environmental condition of the Tracks on or about the Effective Date. LESSEE and LESSOR stipulate that LESSEE was given an opportunity to review and comment on LESSOR's Phase 1 and Phase 2 testing plans. LESSOR and LESSEE further stipulate that the results of LESSOR's Phase 1 and Phase 2 testing may be admitted in court as evidence by either party in the event of litigation.

LESSOR will be responsible for snow removal and the cleaning of switches as required for LESSEE to properly perform the services under the Operating Agreement and LESSEE shall be responsible for any snow removal for parking of vehicles around the trailer.

The crossing at 129th St shall continue to be maintained by LESSOR.

LESSOR will be responsible for all expenses for any derailments or damage to Cars or Locomotives as a result of track failure – unless due to LESSEE's negligence in operating over track that has been reported to Lessor to be in need of repair. These expenses may include, but are not limited to, rerailing, repairs both to Cars, Locomotives and Tracks and any related demurrage expenses. If LESSEE is at fault due to its negligence or improper operations that results in such derailment or damage, LESSEE will assume all of the related costs to rerail and repair the Cars, Locomotive and Tracks.

It is understood and agreed that during the term of this Agreement and only in the case of an emergency, LESSOR may from time to time require the temporary use of two (2) of the Tracks for its emergency purposes, provided that the temporary use of Track shall not unreasonably interfere with the rights of LESSEE hereunder. LESSOR may, in connection with such temporary use, and upon the consent of the Lessee, transfer the Cars placed on Track to another location and upon completion of its temporary use of the Track, LESSOR shall return LESSEE'S Cars thereto. During the period that the Cars of LESSEE are temporarily placed at another location, the terms of this Agreement shall continue to apply to any temporary track in the same manner as they apply to the Track. If LESSEE does not have access to cars for the safe and timely unloading, thereof then any and all demurrage charges will be waived for time that cars are not on Track.

In exercising its rights under this Agreement, LESSEE shall adopt and enforce suitable rules and regulations satisfactory to the LESSOR for the protection of LESSEE'S employees and others while in or on Cars, or on or near Track. LESSEE will require such employees and

others to notify the employees of LESSOR, by proper signals or flags, that LESSEE'S employees are in or on cars, or on or near Track.

8. Office Facilities, Utilities, Etc. LESSOR will provide for LESSEE land for an existing trailer (as is condition) with all necessary utilities (including telephone, internet, water, sewage, gas, and electricity) at the sole cost and expense of LESSOR. LESSOR will also provide a 240 volt power supply and electricity next to the Tracks in which LESSEE will store its locomotive. If LESSOR fails to supply these items prior to the effective date, LESSOR will reimburse LESSEE any additional expenses they incur as a result of failure to provide these items (including fuel costs for the locomotive when LESSEE cannot shut down their locomotive). LESSEE shall be responsible for any and all maintenance and upgrades to the existing trailer and janitorial services at its sole cost and expense.

9. Hazardous and Non Hazardous Products. This Agreement shall be limited to the holding or storage of Cars on the Track containing:

(A) Plastic Pellets

and for no other purpose. LESSEE shall be solely responsible for maintaining all required placards on the Cars at all time while on the Track. If LESSEE desires to switch or store any different commodity on Track, LESSEE must first obtain LESSOR'S prior written consent. Failure of LESSEE to obtain LESSOR'S prior written consent of additional commodities in Cars on the Track does not in any way constitute liability on the part of LESSOR.

LESSEE shall be responsible for installing and properly maintaining all absorbent track matting necessary to prevent hazardous material spills or discharges from locomotives from being released into the environment, the nature and design of which shall be subject to LESSOR's approval. LESSEE shall also be responsible for securing and complying with the terms of any permit that might be required to construct or operate that equipment.

LESSEE shall not discharge, deposit or spill any material, nor permit or allow any material to leak from Cars onto the Track or adjacent Railroad property.

LESSEE covenants that it will not treat, store (other than in railroad cars) or dispose of on the Track any "hazardous waste", "hazardous substance" or "hazardous material" (hereinafter "Hazardous Material") as those terms are now or in the future defined by any federal, state or local law, regulation or ordinance. In the event the Track is now or in the future used for unloading, handling, or transporting Hazardous Materials, LESSEE agrees to fully comply with all applicable federal, state and local laws, rules, regulations, orders or decisions and ordinances (hereinafter referred to as "Standards") regarding the loading and unloading, handling or transportation of same. LESSOR shall have the right, but not the obligation, to enter upon the Track at reasonable times for purposes of inspection.

LESSEE shall notify LESSOR and all appropriate governmental authorities of any release, discharge, deposit, spill or leak of any Hazardous Material from any Car in accordance with the requirements of the federal Emergency Planning and Community Right-to-Know Act and any other applicable federal, state and local spill notification law, regulation or ordinance and shall take such measures as may be required by LESSOR or any governmental authority to contain, neutralize or remove such Material and to remediate any soil, groundwater, ballast or

track material that may be contaminated or impacted by the same, all at LESSEE's sole cost and expense.

10. Compliance with Laws. In connection with the use of the Track under this agreement, LESSEE shall strictly comply with: (1) all Federal, State and Municipal laws, ordinances, circulars, rules or regulations now in effect, or which may from time to time be enacted or prescribed, and all amendments or changes thereto, including all applicable environmental laws, ordinances, rules and regulations and (2) all rules, standards or specifications which may from time to time be published by LESSOR, relating to the type of cars being switched and or stored by LESSEE hereunder, the contents thereof or safety devices or other procedures applicable to the handling of or used in switching and/or storing the Cars on the Track. LESSEE shall, as often as may be required by the rules and regulations of any governmental agency or authority having jurisdiction thereover, inspect Cars containing flammable, non-flammable or liquefied petroleum gasses or liquids for leakage while the Cars are switched and/or stored upon Track. The cost and expense of repairs required on any Car to correct the defect causing the leakage shall, excluding those defects caused by LESSEE, be assumed by LESSOR. Notwithstanding the foregoing, should any compliance with laws result in material expenses to LESSEE, LESSEE shall have the right to terminate this Lease, however the termination of this Track Lease shall not relieve, release or excuse LESSEE from any obligations assumed or from any liability which may have arisen or been incurred by LESSEE under the terms of said Track lease, prior to the termination.

11. No Bailment. LESSOR, after detaching its engine from a Car or Cars placed on the Track for switching and/or storing, shall not be liable as a common carrier or bailee for any property or lading contained in or upon the Car or Cars, it being understood and agreed that the property or lading shall be deemed and held to be in the possession of LESSEE insofar as liability for the safety and care thereof is concerned, and it is further agreed that for all purposes during the period when the Cars are detached from the engine the relationship of the parties hereto shall be on an exclusive LESSOR-LESSEE basis.

12. Indemnity. LESSEE shall indemnify and hold LESSOR and its officers, employees and agents harmless from and against all liabilities, obligations, rights, causes of action, losses, claims, assessments, damages, expenses, fines, penalties and costs (including, but not limited to, costs of conducting removal or remedial actions in response to a release of Hazardous Materials from Cars on the Track that was caused by the actions or inactions of LESSEE, costs of complying with judicial or administrative cleanup orders, costs of complying with directives of federal and state environmental agencies, liability for death or injury to persons, including, without limitation, officers, employees, agents, representatives, contractors, subcontractors, licensees or invitees of the parties hereto, and loss or damage or injury to any property, including, without limitation that belonging to the parties hereto, and attorney's fees) (hereinafter "Liabilities") of any kind, nature and description arising from, growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from (1) the switching and/or storing or movement of any Car on the Track (2) the presence of any officer, employee, agent, representative, agent, contractor, subcontractor, licensee or invitee of LESSEE on or at the Track or adjacent railroad property, or (3) LESSEE's breach of or noncompliance with any covenant, agreement, obligation or duty under this Agreement. In no event shall LESSEE be responsible for the negligent or willful and wanton acts of the LESSOR, its contractors, or their officers, employees and agents. In no event shall either party be liable to the other party for any lost profits or lost revenue.

13. Insurance. So long as this Agreement shall remain in effect, or until all of LESSEE'S Cars shall be removed from the Track (whichever date is later), LESSEE shall obtain at its own cost and expense and keep in full force and effect and maintain with companies satisfactory to LESSOR, Commercial General Liability Insurance insuring LESSEE against any and all damages, costs and expenses resulting from or arising in connection with bodily injury (including death) to any person and/or loss, damage or destruction of any property resulting from, growing out of or incidental to this Agreement with limits of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence, TEN MILLION DOLLARS (\$10,000,000) aggregate, on an occurrence-based policy. The policy must name LESSOR as an Additional Named Insured and shall be endorsed to provide that LESSEE shall assume the contractual obligations as herein set forth in this Agreement, and must not contain any exclusions related to: (i) doing business on, near, or adjacent to railroad facilities. The commercial policy shall have the "railroad exclusion" removed from the definition of the "insured contract."

A duplicate copy of such insurance policy or certificate of insurance shall be furnished LESSOR upon execution of this Agreement. Delivery of the policy of insurance or certificate required by this section and LESSOR's acceptance thereof is not intended to and shall not relieve, limit, affect, or modify LESSEE's obligations under this Agreement.

14. Termination. Either party may at any time and for any reason, or no reason whatsoever terminate this Agreement by serving the other party thirty (30) days notice in writing of intent to terminate the same. No termination or expiration of the term of this Agreement shall release any party hereto from any liability or obligation that may have been incurred by or that may have accrued against it hereunder during the term hereof.

15. No Assignment by LESSOR or LESSEE. Neither party to this Lease shall assign this Agreement or any portion thereof, nor shall LESSEE sublet the Tracks or permit any other use of Tracks or any portion thereof, without the prior written consent of LESSOR which will not be unreasonably withheld and any such purported assignment or sublease, without the consent of LESSOR shall be null and void.

16. Invalidity of Any Provision. In the event any provision, or part thereof, shall be held invalid or unenforceable, it shall not affect the validity or enforceability of any other provisions, or part thereof, of this Agreement.

17. Waivers by the Parties. A waiver or failure to exercise any right or option by a party hereunder shall not affect such party's right to enforce or exercise any future right or option hereunder. Notice to or knowledge by a party of any act or omission by the other party which is or might be a breach by such other party of any of the terms or conditions of this Agreement to be performed by them, and the acquiescence by non-breaching party in or to such act or omission, shall neither be considered to relieve non-breaching party of any obligation assumed by it under this Agreement nor be considered to be a waiver or release by non-breaching party of any rights granted to it under this Agreement.

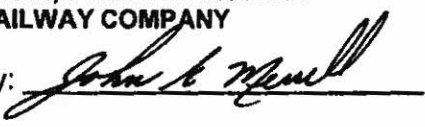
18. LESSOR shall not be obligated to operate on Track, or to place or deliver Cars thereon, or to remove same therefrom, if it shall be prevented or hindered from so doing by ACTS of GOD, public authority, strikes, riots, labor disputes, or any other cause beyond its control, and nothing herein shall affect or alter LESSOR'S obligations to LESSEE for switching applicable tariffs or contracts. LESSOR makes no warranties or representations, express or implied, as to the continuance of rail service to Track.

19. Governing Law. This Agreement shall be governed by the laws of the State of Indiana without regard to its conflicts of law rule.

20. Entire Agreement. This Agreement, together with any exhibits, specifications, or drawings referred to herein, shall constitute the entire Agreement between the parties. Any additional or inconsistent terms not so agreed by Company in writing shall be null and void.

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

**ELGIN, JOLIET & EASTERN
RAILWAY COMPANY**

By: 

John E. Merrill

Manager Contracts

SAVAGE YARD SERVICES INC

By: 

Gary Platt

Print name

Its: Sr. VP