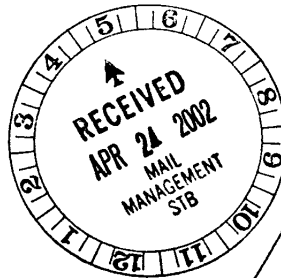


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April 24, 2002



205262

Tracie D. Spear
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VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

FEE RECEIVED

APR 25 2002

**SURFACE
TRANSPORTATION BOARD**

Re: **Finance Docket No. 34014**
Canadian National Railway Company -- Trackage Rights Exemption --
Bangor And Aroostook Railroad Company, And Van Buren Bridge
Company

Finance Docket No. 34015 205263
Waterloo Railway Company -- Acquisition Exemption --
Bangor And Aroostook Railroad Company, And Van Buren Bridge
Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Trustee's Petition To Reopen And Revoke Exemptions** dated April 24, 2002. A check in the amount of \$150.00, representing the appropriate filing fee for the Trustee's Petition To Reopen And Revoke Exemptions, is enclosed.

Should any questions arise regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,

FILED

ENTERED
Office of the Secretary

APR 25 2002

Part of
Public Record

Tracie D. Spear

APR 25 2002

Tracie D. Spear
Attorney for Trustee of Bangor & Aroostook
Railway Company

**SURFACE
TRANSPORTATION BOARD**

Enclosures

205262
EXPEDITED HANDLING REQUESTED*

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34014

CANADIAN NATIONAL RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BANGOR AND AROOSTOOK RAILROAD COMPANY, and
VAN BUREN BRIDGE COMPANY



FINANCE DOCKET NO. 34015

205263
WATERLOO RAILWAY COMPANY
-- ACQUISITION EXEMPTION --
BANGOR AND AROOSTOOK RAILROAD COMPANY, and
VAN BUREN BRIDGE COMPANY

TRUSTEE'S PETITION TO REOPEN AND REVOKE EXEMPTIONS

Charles H. White, Jr.
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(410) 268-8575

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APR 25 2002

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Office of the Secretary

APR 25 2002

Part of
Public Record

Kevin M. Sheys
Tracie D. Spear
Kirkpatrick & Lockhart LLP
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Washington, DC 20036
(202) 778-9000

**SURFACE
TRANSPORTATION BOARD**

**ATTORNEYS FOR TRUSTEE OF BANGOR &
AROOSTOOK RAILWAY COMPANY**

Dated: April 24, 2002

* Related legal issues are presently pending in the United States Bankruptcy Court, District of Maine; In Re Bangor & Aroostook Railway Company, Debtor, Case No. 01-11565. Trustee's Motion to Reject Executory Contracts (Service and Trackage Agreements). Administrative and judicial efficiency require the Board both to expeditiously consider the revocation petition and to timely advise the Court of its action.

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34014

CANADIAN NATIONAL RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BANGOR AND AROOSTOOK RAILROAD COMPANY, and
VAN BUREN BRIDGE COMPANY

FINANCE DOCKET NO. 34015

WATERLOO RAILWAY COMPANY
-- ACQUISITION EXEMPTION --
BANGOR AND AROOSTOOK RAILROAD COMPANY, and
VAN BUREN BRIDGE COMPANY

TRUSTEE'S PETITION TO REOPEN AND REVOKE EXEMPTIONS

James E. Howard, Esq., Trustee of the Bangor and Aroostook Railroad Company, Debtor ("Trustee"), petitions the Surface Transportation Board ("STB" or "Board") pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. § 1115.4 to reopen and revoke Notices of Exemption served on March 21, 2001 in Finance Docket Nos. 34014 and 34015, on the basis of substantially changed circumstances. See 49 U.S.C. § 10502(d); 49 C.F.R. § 1115.3(b). Since the Notices of Exemption became effective, an involuntary Chapter 11 reorganization proceeding has been filed against the Bangor & Aroostook Railroad Company ("BAR") and on December 4, 2001, James B. Haines, Jr., Chief Judge of the United States Bankruptcy Court, District of Maine, granted an order of relief in the proceeding. Case No. 01-11565, U.S. Bky. Ct., D. Maine. The Trustee

has filed a motion to, inter alia, reject the contracts that form the basis for both of the Notices of Exemption. See 11 U.S.C. § 365(a).¹

Canadian National Railway Company ("CN") has not used its trackage rights and the easement of Waterloo Railway Company ("Waterloo" or "WRC") is wholly dependent upon and defined by the trackage rights. Thus, neither CN nor WRC have exercised their rights under the Notices of Exemption.

The Notices of Exemption were filed to secure STB exemptions for the transactions contemplated by the trackage rights arrangement. The Bankruptcy Court has before it Trustee's Motion to reject the contracts that form the basis for the trackage rights arrangement and both of the Notices of Exemption. That Motion grew out of the Trustee's analysis of the agreements, an exercise of his business judgment that the agreements are burdensome to the estate, and his determination to protect the estate by rejecting the agreements. The Trustee and CN are litigating the rejection issue before the Bankruptcy Court. These are certainly significantly changed circumstances. The Trustee submits that it is not appropriate for the Board to permit the exemptions to remain effective given these changed circumstances and the present controversy. Pursuant to 49 C.F.R. § 1115.4, the STB should (i) determine that the changed circumstances justify reopening the Notices and (ii) revoke the Notices.

I.
STATEMENT OF FACTS

CN and BAR have long combined to provide through service for Fraser Paper Company ("Fraser Paper"), a shipper located at Madawaska, Maine at the northern reaches of BAR's trackage. Prior to March 2001, the carriers performed traditional

¹ A copy of the Trustee's Motion to Reject Executory Contracts (Service and Trackage Agreements) and Exhibits A-C thereto, is attached hereto as Attachment A.

through route operations. BAR handled Fraser cars between the Madawaska plant and the CN interchange at St. Leonard, New Brunswick over its own tracks and via the lines of its subsidiary Van Buren Bridge Company ("VBB"), which spans the St. Johns River international border. CN provided the long haul beyond the interchange. The carriers quoted a joint rate for this service and made division settlements.

This approach changed in March 2001. While in financial distress, BAR management negotiated an arrangement with CN whereby BAR received an infusion of working capital in exchange for a less favorable revenue split on the Fraser traffic. In return for an immediate receipt of \$5 million, BAR agreed to forego its usual divisions of the joint line revenue and accept a lower \$500 per car haulage fee for hauling cars to the CN interchange at St. Leonard. In other words, although BAR continued to do the same work, it now would haul the cars over its and VBB's line for the account of CN, which was thereby free to quote a single line rate to Fraser. The terms of this arrangement were included in a Junction Settlement Agreement between BAR and CN. The carriers continue to perform the same physical operations and provide the same level of service to Fraser as they did under the former through route service. Under the Junction Settlement Agreement, BAR picks up and places Fraser's cars at Madawaska, and hauls them between Madawaska and the CN junction in St. Leonard, New Brunswick via its own and VBB's trackage.² As noted above, this rail operation is the same as the one that was in place prior to the implementation of the Junction Settlement Agreement.

² The consummation of the Junction Settlement Agreement did not require STB exemption or approval. The STB has no jurisdiction with respect to the transactions covered by the Junction Settlement Agreement.

In addition to the Junction Settlement Agreement, the parties executed a trackage rights agreement and an accompanying Easement Agreement defined by those trackage rights. However, the underlying trackage rights have never been exercised. The Trackage Rights Agreement grants CN overhead trackage rights to serve Fraser on the approximately 22.72 route mile BAR rail line between Madawaska, Maine and Canadian Junction, thence over the St. Johns River via BAR's subsidiary, VBB, to its interchange with CN in St. Leonard, NB. The Easement is both defined and limited by the Trackage Rights Agreement. It is meaningless in the absence of the trackage rights. The Easement is "for the uses and purposes defined and described in that certain Trackage Rights Agreement dated March 14, 2001 by and between Grantor and Canadian National Railway Company...." It may be exercised only by Grantee or "CN or any subsidiary of CN" pursuant to the trackage rights. Easement, ¶¶ 1 and 3.

On August 15, 2001, an involuntary Chapter 11 proceeding was filed against BAR. The United States Bankruptcy Court for the District of Maine granted that order on December 4, 2001. Case No. 01-11565, U.S. Bky. Ct., D. Maine. James E. Howard, Esq. was appointed Trustee on December 28, 2001.

On March 18, 2002, Trustee's counsel filed an appropriate motion seeking authority to reject all three agreements pursuant to 11 U.S.C. § 365(a) with the Bankruptcy Court for the District of Maine.

II. REVOCATION OF THE EXEMPTIONS IS WARRANTED

It is not consistent with the transportation policy or appropriate for the Board to permit the exemptions obtained by the Notices of Exemption to remain in effect in light

of the pending motion to reject the underlying agreements. 49 U.S.C. §§ 10101(3)-(5), 10502(d); 49 C.F.R. § 1115.3(b).

A. There Are Substantially Changed Circumstances.

“When, as here, an exemption has become effective, a revocation request is treated as a petition to reopen and revoke and, under 49 C.F.R. 1115.3(b), it must state in detail whether revocation is supported by material error, new evidence, or substantially changed circumstances.” Indiana Hi-Rail Corporation – Lease and Operation Exemption – Norfolk and Western Railway Company Line Between Rochester and Argos, IN, and – Exemption From 49 U.S.C. 10761, 10762 and 11144, Finance Docket No. 32162 slip op. p. 3 (served Jan. 30, 1998). The intervening events of bankruptcy, and the pendency of the Trustee’s rejection motion before the Bankruptcy Court constitute a substantial change of circumstances warranting immediate reopening and revocation.

The STB has held that under some circumstances, the use of a class exemption is not appropriate. See Finance Docket No. 34040, Riverview Trenton Railroad Company – Petition for Exemption From 49 U.S.C. 10901 To Acquire And Operate A Rail Line In Wayne County, MI (STB served Feb. 14, 2002) (STB revoked exemption for acquisition and operation of rail line where there was substantial opposition and the STB determined that more detailed scrutiny was warranted); Finance Docket No. 33950, Jefferson Terminal Railroad Company – Acquisition and Operation Exemption – Crown Enterprises, Inc. (STB served March 19, 2001) (“Jefferson Terminal”) (STB revoked exemption for acquisition and operation of rail line where there were substantial factual and legal issues that required a more searching process and there was a

pending condemnation proceeding in state court); Docket No. AB-167 (Sub. No. 1088X), Consolidated Rail Corporation – Exemption – Abandonment of the Weirton Secondary Track in Harrison and Tuscarawas Counties, OH (ICC served June 7, 1989) (ICC revoked exemption for abandonment of rail line where it determined a more thorough review process was necessary in light of surrounding controversy).

Each of the above-cited cases involves a determination by the STB/ICC that more detailed scrutiny was required and that use of the exemption process was not appropriate. In the Jefferson Terminal case, the revocation was based in part on the fact that there was a condemnation proceeding in state court. Here the controversy is more intensely focused. The Trustee has exercised his rights under the Bankruptcy Code by requesting the Bankruptcy Court to grant an order rejecting the exemptions' underlying agreements altogether. There will be no consensual underpinnings for the Notices of Exemption if the Court grants this relief.

B. Trackage Rights Operations Have Not Been Initiated.

As noted above, CN has not used the trackage rights outlined in its Notice of Exemption. Since CN has not used the rights described in the Notice, there has been no change in rail service provided to Fraser Paper. The Board's determination on this Petition is made easier by this fact. See Finance Docket No. 31405, Arkansas Central Railway Co., Inc. – Operation Exemption – Line of Herzog Stone Products, Inc. and Finance Docket No. 31465, Kansas City Southern Railway Co. – Acquisition and Operation or Trackage Rights Exemption – Arkansas Central Railway Co., Inc. (ICC served April 7, 1995).

C. The Easement Is Ancillary To The Unused Trackage Rights.

The Easement has meaning only by specific reference to and incorporation of the Trackage Rights Agreement. It does not stand alone. It would be anomalous to let the easement exemption stand without the support of the Trackage Rights Agreement. Without the Trackage Rights Agreement, the Easement becomes meaningless.

D. The Shipper Will Not Be Harmed By Revocation.

There has been no change in train operations pursuant to the Notices of Exemption. The trackage rights have not been consummated. Neither CN nor Waterloo have operated over BAR lines. Indeed even in filing the Notices of Exemption they did not intend to begin such operations: "BAR will continue to operate the Madawaska Line, as it does today....It is not presently expected that WRC will conduct rail operations on the Madawaska Line." Finance Docket No. 34015, Notice of Exemption, at 2. Presently, BAR operates between Madawaska and its interchange with CN at St. Leonard, New Brunswick just as it did before March, 2001. It provides pick up and set out car service at the Fraser Paper Plant just as it did before the Notices of Exemption were filed. Granting this Petition to Reopen and Revoke will not change rail operations to and from Fraser Paper.

III.

EXPEDITED HANDLING AND REPORT TO THE COURT IS NECESSARY

The fact that the Bankruptcy Court is reviewing the contract rejection issue should not cause the Board to delay or defer its action on the exemption revocation request. In revising the former § 77 railroad reorganization practice to harmonize and expedite court and agency actions, Congress acted to eliminate matters being "shuttled back and forth between the Interstate Commerce Commission...and the courts." S.

Rep. No. 989, 95th Cong., 2d Sess. 26 (1978), 1978 U.S. Code Cong. & Admin. News, 5787, 5797. See Wheeling-Pittsburgh Steel Corp. v. McCune, 836 F.2d 153, 159-160 (3rd Cir. 1987).

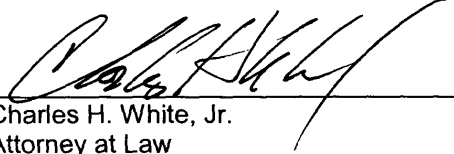
Here the Court and Board have complementary but different issues pending; contract rejection and exemption revocation. Given the Trustee's determination that the agreements and exemptions are burdens on the debtor and detrimental to the reorganization process, it is imperative that the Board and Court act expeditiously in their separate but parallel jurisdictions. The adverse financial impact on BAR of the agreements warrants simultaneous, rather than seriatim, review. The Board should act now to revoke the exemptions on the basis of significantly changed circumstances, as well as the concurrent pendency of the Court's contract rejection case. See Jefferson Terminal, supra.

Given the pendency of the Court's review of the Trustee's rejection of the underlying agreements, Trustee also respectfully requests that the Board report either its decision or progress to the Court, pursuant to 11 U.S.C. § 1164.

IV. **CONCLUSION**

The Trustee requests the Board to (i) determine that the changed circumstances justify reopening the Notices of Exemption and (ii) revoke the Notices of Exemption in Finance Docket Nos. 34014 and 34015. Trustee further requests that the Board advise the Court of its actions or progress.

Respectfully submitted,



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**ATTORNEYS FOR TRUSTEE OF BANGOR &
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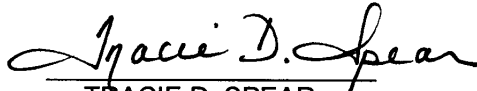
Dated: April 24, 2002

CERTIFICATE OF SERVICE

I hereby certify that, on this 24th day of April, 2002, I have caused a copy of the foregoing **Trustee's Petition To Reopen And Revoke Exemptions** to be served by first class mail, postage prepaid, and by facsimile, upon:

Thomas J. Litwiler
Fletcher & Sippel LLC
180 North Stetson Avenue – Suite 3125
Two Prudential Plaza
Chicago, IL 60601-6721

William C. Sippel
Fletcher & Sippel LLC
180 North Stetson Avenue – Suite 3125
Two Prudential Plaza
Chicago, IL 60601-6721


TRACIE D. SPEAR

Hearing Date: 04/03/2002
Hearing Time: 11:00 a.m.
Hearing Location: Portland

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

BANGOR & AROOSTOOK RAILROAD COMPANY,

Debtor.

)
)
) Chapter 11
) Case No. 01-11565
)
)
)

TRUSTEE'S MOTION TO REJECT EXECUTORY CONTRACTS
(SERVICE AND TRACKAGE AGREEMENTS)
(With Incorporated Memorandum of Law)

NOW COMES James E. Howard, the Trustee in the above-captioned Chapter 11 case (the "Trustee"), by and through his attorneys, and moves for an order, pursuant to 11 U.S.C. § 365(a) and F. R. Bankr. P. 6006(a), authorizing the Trustee to reject certain executory contracts between the Estate and Canadian National Railway Company ("CN") and its subsidiaries, including Waterloo Railway Company. In support of the within Motion, the Trustee states the following:

1. On or about August 15, 2001, an involuntary Chapter 11 bankruptcy case was filed against Bangor & Aroostook Railroad Company (the "Debtor").
2. On or about December 4, 2001, this court entered an order for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 et. seq.
3. On or about December 28, 2001, the U.S. Trustee appointed the Trustee in this case. By order dated February 11, 2002, the court approved the Trustee's application to employ the law firm of Verrill & Dana, LLP as counsel to the Trustee.

4. This court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1344(b) and 1409(a), and the standing order of the United States District Court for the District of Maine dated August 1, 1984, pursuant to which all cases filed in Maine under Title 11 are automatically referred to this court. This is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. Pursuant to 11 U.S.C. § 108, the Trustee has the authority to operate the business of the Debtor.

6. The Trustee hereby seeks authority to reject the following executory contracts between the Debtor and Canadian National Railway Company ("CN") and Waterloo Railway Company ("Waterloo"), a subsidiary of CN: (1) Junction Settlement Agreement dated as of March 1, 2001 ("Junction Agreement", attached as Exhibit A); (2) Trackage Rights Agreement dated as of March 1, 2001 ("Trackage Agreement", attached as Exhibit B); and (3) that certain ancillary "easement" dated as of March 15, 2001 ("Ancillary Agreement", attached as Exhibit C). The Junction Agreement, the Trackage Agreement, and the Ancillary Agreement are sometimes referred to herein as the "Contracts."

FACTS UNDERLYING EXECUTION OF THE CONTRACTS

7. Fraser Paper Company ("Fraser"), a long-standing customer of the Debtor, has a large facility located on the line of the Debtor at Madawaska, Maine, which is on the international border with Canada. Rail traffic to or from the Fraser facility can move over three different routes. First, traffic can move approximately 25 miles east over the Debtor's line to Van Buren, Maine, and then on to CN's line, at St. Leonard, Quebec. Second, traffic can move over the line of the Debtor south of Madawaska to the interchange with Canadian American Railroad at Brownsville Junction for further movement to Montreal or New Brunswick. Third,

traffic from Fraser can move south over the line of the Debtor to the interchange with the Guilford rail system in Bangor.

8. Prior to March, 2001, a substantial portion of the rail traffic to or from the Fraser facility at Madawaska moved over the Debtor's line to Van Buren, over the bridge to St. Leonard and then on to CN's line. For such movements, the Debtor handled the traffic between Madawaska and St. Leonard, where CN received or delivered the cars. The Debtor and CN agreed upon and quoted to Fraser a joint rate for the movement of traffic between Madawaska and its origin or destination. The Debtor and CN also agreed on a division of the joint rate between them, thereby determining the amount that each would receive for traffic to or from Madawaska.

9. In 2001, the Debtor was facing extreme shortfalls in its working capital. In order to address such shortfalls, at least in part, the Debtor negotiated contracts with CN pursuant to which CN would pay \$5 million to the Debtor. In return, CN negotiated to receive a greater share of revenue for rail freight traffic moving to or from the Fraser mill in Madawaska. CN proposed, and the Debtor agreed, that the Debtor would handle (or "haul ") cars on the Debtor's line between Madawaska and St. Leonard for the account of CN. CN would thereby have the ability on its own to set the rate for transportation to and from Madawaska. CN proposed to pay the Debtor \$500 for each car hauled for the account of CN, rather than to divide the joint line revenue as the parties had in the past.

10. In addition to the haulage arrangement described above, CN requested, and the Debtor agreed to provide, trackage rights to permit CN to operate its own trains between Madawaska and St. Leonard.

11. In March, 2001, the Debtor and CN entered into three agreements to implement the transaction described above. The Junction Agreement covered the haulage arrangement, and the Trackage Agreement permitted CN to use the tracks subject to various terms and conditions, and the Ancillary Agreement purported to create an easement but incorporated the terms and conditions of the Trackage Agreement.

12. Subsequent to the execution of the agreements in March, 2001, rail traffic to and from Fraser at Madawaska has been handled by the Debtor for the account of CN in accordance with the Junction Agreement. From the perspective of all interested parties, including Fraser, the Debtor and CN, operations and service subsequent to March, 2001 have been indistinguishable from operations and service prior to March, 2001. CN has never attempted to exercise its rights under the Trackage Agreement in order to operate its own trains to serve Fraser at Madawaska.

13. While the transaction with CN provided a one-time infusion of working cash, it has adversely affected the economic condition of the Debtor. The haulage fee earned by the Debtor is substantially less than the division of revenue that the Debtor previously received for handling the same traffic. Consequently, current revenues of the Debtor have been diminished and will continue to be diminished as a result of the transaction, thereby contributing to the current and projected negative cash flow of the Debtor.

14. The transaction has also adversely impacted the value of the Debtor for purposes of a sale. The capitalized value of the decrease in revenue is substantial, and the buyer with which the Debtor has been negotiating to sell the Debtor's system has agreed to pay substantially more for the Debtor's assets if the economics of the Debtor's business with Fraser are restored to the pre-March 2001 status.

15. The continued existence of the Trackage Agreement is harmful to the Debtor's estate. If the Junction Agreement is rejected but the Trackage Agreement continues in effect, CN could begin to serve the Fraser facility directly. Such service by CN would undoubtedly reduce the amount of Fraser business which would be handled, and, correspondingly, the revenues which would be earned, by the Debtor. Therefore, as described in the prayer for relief and the form of order submitted herewith, the Junction and Trackage Agreements must be rejected together.

REJECTION IS PROPER IN THIS CASE

I. REJECTION IS A PROPER EXERCISE OF THE TRUSTEE'S BUSINESS JUDGMENT.

16. In pertinent part, 11 U.S.C. §365 provides that "the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. §365(a). The standard which courts use to authorize assumption or rejection is the "business judgment" test. See Bezanson v. Metropolitan Ins. & Annuity Co., 952 F.2d 1, 7 (1st Cir. 1991); In re Victory Markets, Inc., 221 B.R. 298, 309 (2^d Cir. BAP 1998); see also 2 Norton Bankr. L. & Prac. 2d § 39:16, at 39-49 (1994) ("Assumption or rejection of [an executory] contract will be approved upon a mere showing that the action will benefit the estate.").

17. The Trustee's decision to assume or reject is subject to the business judgment standard. See Sharon Steel Corp. v. National Fuel Distribution Corp. (In re Sharon Steel Corp.), 872 F.2d 36, 40 (3d Cir. 1989); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984). It is enough, if the Trustee determines in his business judgment, that no benefit will be realized by assuming the contracts or leases to be rejected. In re Sharon Steel Corp., 872 F.2d at 39-40, citing In re Wheeling Pittsburgh Steel Corp., 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987). The business judgment standard requires that the court approve the Trustee's business decision unless

that judgment is the product of bad faith, whim, or caprice. Lubrizol Enterprises v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986). The Trustee has appropriately exercised his business judgment in rejecting all of the Contracts. As set forth above, the Debtor's estate will suffer substantial and continuing loss in the event the Contracts are not rejected, and further, successful rejection will result in a higher purchase price paid by the buyer with whom the Trustee has been negotiating. The Trustee's decision unquestionably satisfies the business judgment standard set forth in Bezanson, supra.

II. ALL THREE CONTRACTS ARE EXECUTORY

18. A contract is executory where "performance is due to some extent on both sides." N.L.R.B. v. Bildisco and Bildisco, 104 S.Ct. 1188, 1194 n.6 (1984) (quoting H.R.Rep. No. 95-595, p. 347 (1977) and S.Rep. No. 95-989, p. 58 (1977)); In re Kane, 248 B.R. 216, 223 (1st Cir.BAP 2000). "Federal courts have pretty generally settled upon the following definition of an executory contract: 'a contract under which the obligation[s] of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other.'" Gallivan v. Springfield Post Road Corp., 110 F.3d 848, 851 (1st Cir. 1997) (quoting In re Columbia Gas System Inc., 50 F.3d 233, 239 (3d Cir.1995)).

19. All of the Contracts remain substantially unperformed by all parties, as set forth in more detail below. The Trustee in the exercise of his business judgment has determined that the Contracts are burdensome to the estate, and that rejection of all the Contracts would confer a substantial benefit upon the estate. Accordingly, the Contracts may be rejected under 11 U.S.C. §365.

A. THE JUNCTION AND TRACKAGE AGREEMENTS ARE EXECUTORY

20. The Debtor in the Junction Agreement agreed to provide certain haulage services for the account of CN between St. Leonard, New Brunswick and Madawaska, Maine, in exchange for payment by CN to the Debtor at the rate of \$503 (as escalated) per loaded car. Exh. A at 3. The Junction Agreement also entitles the Debtor to certain "reclaim" allowances pursuant to which the Debtor is permitted to reclaim credits from CN for hours and miles of usage of any BAR cars used for hauling. Id. at 4-5. The initial term of the Junction Agreement is five years, with the option to renew upon mutual consent of the parties. Id. at 5, ¶7. In short, because the Junction Agreement provides for on-going services to be rendered in exchange for on-going prospective payments, all of which remain unperformed, it meets the definition for "executory contracts" cited with approval by the First Circuit in Gallivan, 110 F.3d at 851.

21. The Trackage Agreement is also an executory contract subject to rejection. It generally gives CN the right, at its option, to operate its trains over the Debtor's line, in exchange for which CN was to compensate BAR at the rate (subject to revision) of \$100 per car (loaded or empty). Exh. B at 3-4, Articles 5-6. The Trackage Agreement set forth a term of 99 years, although CN reserved the unilateral right to terminate upon 6-months written notice. Id. at 14, Article 19. The Trackage Agreement compensation terms are also "open for renegotiation every five (5) years," at the option of either BAR or CN, id. at 5, Article 6(d), and BAR reserved the right to terminate upon CN's default. Id. at 13, Article 16. BAR further undertook several on-going obligations, including by way of example (i) monthly accounting duties, Exh. B Art. 5(c); and (ii) continuing maintenance, repair, alteration, wreckage clearing and other obligations and liabilities, id. at Art. 8-10, 13-14.

22. Performance remains incomplete and on-going under the Trackage Agreement. It therefore meets the "Countryman" definition of an executory contract adopted by the First Circuit. Even if the Trackage Agreement were construed to grant a license, as opposed to a simple contract, it is well-settled that a license is an executory contract subject to rejection. In re Tirenational Corp., 47 B.R. 647, 651 (Bankr. N.D. Ohio 1985) (citing cases). A license is a mere revocable right, privilege or permission to enter upon or do acts upon another's lands. See Burnham v. Burnham, 130 Me. 409, 156 Atl. 823 (1931). Licenses confer no actual interest in the land. Emerson v. Shores, 95 Me. 237, 49 Atl. 1051 (1901). Whether construed as a contract or a license, the Trackage Agreement is executory and subject to rejection.

23. Courts in determining whether contracts and licenses are executory look to the parties' continuing duties, liabilities, rights and obligations. For example, contracts (or licenses) are "executory" where the parties have agreed to royalty or usage payments and/or undertaken accounting, defense, indemnity, "hold harmless," and/or repair or maintenance obligations. See, e.g., Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc., 756 F.2d 1043; see also Matter of Biopolymers, Inc., 136 B.R. 28, 30 (Bankr. D. Conn. 1992); In re Access Beyond Technologies, Inc., 237 B.R. 32, 43 (Bankr. D.Del. 1999) (duty to refrain from suing other for infringement constituted on-going duty to perform); In re Greenfield Dry Cleaning & Laundry, Inc., 249 B.R. 634, 640-641 (Bankr. E.D. Pa. 2000) (finding termination and expiration provisions dispositive). As leading commentators have indicated, any contract containing maintenance, support, service, training, indemnity, royalty and/or accounting obligations is "quite likely" executory. See Norton Bankr.L. & Prac. 2d §151:35 at 9412. The Trackage Agreement includes most if not all of these provisions. See Exh. B at Exh. B Art. 5(c) (imposing

continuing accounting duties on BAR); id. at Art. 8-10, 13-14 (setting forth maintenance, repair, alteration, wreckage clearing and other obligations and liabilities).

24. In short, the Trackage Agreement, like the Junction Agreement, provides for on-going performance by both parties and prospective payments, all of which remain substantially unperformed. Indeed, CN has not yet exercised its right to operate under the Trackage Agreement. The obligations of both parties "are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other." Gallivan, 110 F.3d at 851 (citations omitted). Both the Junction and the Trackage Agreements are executory contracts that may be rejected pursuant to 11 U.S.C. §365.

B. THE ANCILLARY AGREEMENT MAY ALSO BE REJECTED

25. The Ancillary Agreement attached as Exhibit C, although labeled "Easement", confers no rights independent of the track usage rights set forth in the Trackage Agreement. The Ancillary Agreement refers expressly to the Trackage Agreement and provides that Waterloo may use the easement only "in accordance with the terms and provisions" of the Trackage Agreement, and fails to describe or convey any "easement" rights independent of the Trackage Agreement's usage rights. The Ancillary Agreement can therefore only be construed to include all of the on-going obligations set forth in the Trackage Agreement that it, in effect, incorporates by reference. The Ancillary Agreement, like the Trackage Agreement, is therefore an executory contract that may be rejected. Stated otherwise, rejection of the latter will automatically work a rejection of the former.

26. On its face, the Ancillary Agreement fails to define or describe any rights independent of the Trackage Agreement. Neither the exhibit attached to the Ancillary Agreement nor the notice itself define any rights or grant any interest that is not completely

dependent upon the Trackage Agreement, and the exchange of on-going performance contemplated therein, all of which is consistent with the parties' intent as evidenced by the instrument itself. See, e.g., First Hartford Corp. v. Kennebec Water Dist., 490 A.2d 1209 (Me. 1985); Northern Utilities, Inc. v. City of South Portland, 536 A.2d 1116 (Me. 1988) (determining scope of easement by parties' intent as expressed in the instrument).

27. Although labeled "easement," the Ancillary Agreement is expressly controlled by and limited to the "uses and purposes defined and described" in the Trackage Agreement. Exh. C. ¶1. It neither grants nor describes any rights or interests other than "in accordance with the terms and provisions of the Trackage Rights Agreement." Id. at ¶3. It fails to identify a single independent right, such as the rights of ingress, egress, passage, repassage or other such entitlements usually found in real property easements, including railroad easements.

28. By way of comparison, BAR, in an unrelated transaction, reserved a stand-alone easement which expressly described the easement rights granted. See Exhibit D hereto, which is a copy of the recorded deed from that transaction. That document appropriately reserved to BAR, its successors and assigns, "a right-of-way and easement to use, operate over, maintain, repair, and replace a certain railroad line and railroad right-of-way, and all roadbed, culverts, structures, communications and signal line and railroad right of way"). This type of reservation of an easement for freight transportation purposes, where the parties intend to create rights independent of other documents, is the standard vehicle in the railroad industry for creating easements. See, e.g., Exhibit E hereto an excerpt from a deed from Maine Coast Railroad to the State of Maine reserving an easement for rail operations. By contrast, the Ancillary Agreement neither describes nor conveys any such separately existing "easement" rights. Rather, it expressly refers to the "the operating rights hereunder . . . in accordance with

the Trackage Rights Agreement." Exh. C. at ¶3 (emphasis added). Once the Trackage Agreement is gone, the Easement Agreement will have no meaning or purpose because it fails to describe or identify any rights transcending the operating rights set forth in the Trackage Agreement. The Ancillary Agreement is not, and cannot be construed as, a stand-alone agreement that will survive rejection of the Trackage Agreement. Once that occurs, nothing will be left of the so-called "easement", and the Ancillary Agreement will become an empty vessel.¹

29. The Ancillary Agreement expressly excludes and excepts "the following property, conveyed by the Company being the rail and related cross ties, tie joints, tie plates, switch ties, turnouts, switches anchors and spikes located on the land described above, together with any and all replacements therefore and accessions thereto." Exh. C at 8, 10. Because no separately existing easement over the tracks was created, and no "easement" will survive rejection of the Trackage Agreement, which pertains only to the use of the tracks.

30. Finally, the language of the Ancillary Agreement is completely consistent with the parties' intent with respect to the underlying transaction. The Ancillary Agreement does not define, describe or otherwise identify any rights beyond those set forth in the Trackage Agreement because the parties never intended or bargained for any such rights when they executed the three Contracts as part of a single, integrated transaction. See Affidavit of Frederic W. Yocum, Jr. submitted herewith. ("Yocum Aff."), ¶5. No independent bargain was struck to grant a "perpetual easement" to CN or any other party.² See id. For this obvious reason, the instrument itself is expressly limited to the "uses and purposes" for which it was granted, all "in accordance with" the "terms and provisions" of the Trackage Agreement. Exh. C at ¶¶1, 3-4. If

¹ Alternatively, the Ancillary Agreement, like the Trackage Agreement it incorporates, may be rejected as an executory license.

² Waterloo Railway Company, the "grantee" of the "Easement", is a subsidiary of CN, and was named as grantee at the express direction of CN. See Yocum Aff. ¶5; see also Exh. C at 11 (indicating that CN prepared the "Easement")

the parties had intended for the "easement" to survive the Trackage Agreement, they would have expressly stated this in at least one of the Agreements. No stand-alone easement was created, and none will survive rejection of the Trackage Agreement.

31. Abandonment of railroad lines or discontinuances of trackage rights are subject to the jurisdiction of the United States Surface Transportation Board ("STB") pursuant to 49 U.S.C. 10904 and 11323. The Trustee intends promptly to initiate a proceeding before the STB seeking the abandonment or discontinuance of the trackage rights of CN under the Trackage Agreement.

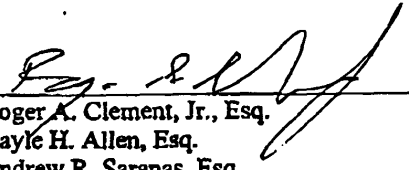
CONCLUSION

32. In sum, all of the Contracts expressly contemplate on-going and continuing performance by the parties, all or a substantial portion of which remains to be rendered. None of the Contracts defines, describes or grants the right to take any acts or otherwise use the Debtor's property without further performance by all parties. All of the Contracts may be rejected as executory, whether considered as separate or integrated documents. Alternatively, rejection of the Trackage Agreement will likewise work a rejection of the Ancillary Agreement by operation of law. In any event, the Trustee is entitled to reject all three executory Contracts under Code section 365.

WHEREFORE, the Trustee respectfully requests that this court enter an order, pursuant to 11 U.S.C. § 365(a) and F. R. Bankr. P. 6006(a), finding that the Junction, Trackage and Ancillary Agreements are executory contracts and authorizing the Trustee to reject the same, approving the form of notice of rejection attached hereto as Exhibit F together with such other

and further relief as this Court deems just and proper under the facts and circumstances of this case.

Dated: March 18, 2002



Roger A. Clement, Jr., Esq.
Gayle H. Allen, Esq.
Andrew R. Sarapas, Esq.
Attorneys for James E. Howard, Trustee

VERRILL & DANA, LLP
One Portland Square, P.O. Box 586
Portland, ME 04112-0586
(207) 774-4000 - Phone
(207) 774-7499 - Fax

EXHIBIT

A

CONTRACT03-Apr-01

Co: B

No: C-7899

Lease or Contract: CONTRACT

Name: CANADIAN NATIONAL RAILWAY

Street: 1 ADMINISTRATION ROAD

City, St: CONCORD, ONT. CANADA L4K 1B9

Cross Indexed:

Effective Date: 3/1/01

Term date and how term: 5 YEARS TO 2/28/06 WITH 5 YEAR RENEWAL
OPTION

Activities and Location Covered: JUNCTION SETTLEMENT AGREEMENT

Types and Dates of Billings and Amounts Involved: \$5,000,000 LUMP SUM PAYMENT @ \$500/CAR

Comments:

MAR-19-02 14:04

FROM-VERRILL AND DANA

1-207-774-7499

T-761 P.16/74 F-555

BANGOR AND AROOSTOOK RAILROAD COMPANY

NO. C-7832

LEASE () OR CONTRACT (**X**)

Name Canadian National Address 8th Floor, 1234 Main Street
Moncton, NB E1C 1B7

Cross-Indexed as Running Rights - VBB

Effective Date: 7/1/96

Terminating Date and How Terminated:

Activities and Location Covered
by Agreement:

Agreement to grant Van Buren Bridge Company running rights over CN
between Cyr Junction and St. Leonard, NB

Types and Dates of Billing and Amounts Involved:

See Contract

Comments:

MAR-19-02 14:04

FROM-VERRILL AND DANA

1-207-774-7499

T-761 P.17/74 F-555

BANGOR AND AROOSTOOK RAILROAD COMPANY
ACCOUNTING DEPARTMENT

LEASE () OR CONTRACT (X)

NO. C-7694

Name Canadian National Address C.P. 8100, Montreal, PQ H3C 1H1

Cross-Indexed as Transportation Contract ICC-CN-C-02192

Effective Date: 8/8/90

Terminating Date and How Terminated: 9/7/90

Activities and Location Covered
by Agreement:

Sulphur Molten from Sarnia, ON to Searsport, ME

Types and Dates of Billings and Amounts Involved:

Comments:

MAR-18-02 14:04

FROM-VERRILL AND DANA

1-207-774-7499

T-761 P.18/74 F-555

**BANGOR AND AROOSTOOK RAILROAD COMPANY
ACCOUNTING DEPARTMENT**

LEASE () OR CONTRACT (X)

NO. C-7692

Name Canadian National Rwy. Address P. O. Box 8101
Montreal, PQ H3B 2M9

Cross-Indexed as Transportation Agreement CN Contract #02716

Effective Date: 6/25/90

Terminating Date and How Terminated: 9/30/90

Activities and Location Covered
by Agreement:

Movement of Sulphuric Acid from PQ Rouyn Noranda to
Searsport, ME

Types and Dates of Billings and Amounts Involved:

Comments:

CONTRACT

18-Apr-00

Co: B

No: C-7899

Lease or Contract: CONTRACT

Name: CANADIAN NATIONAL RAILWAY

Street: 1 ADMINISTRATION ROAD

City, St: CONCORD, ONT. CANADA L4K 1B7

Cross Indexed:

Effective Date: 3/1/01

Term date and how term: 5 YEARS TO 2/28/06 WITH 5 YEAR
RENEWAL OPTION

Activities and Location Covered: SUNCTION SETTLEMENT AGREEMENT

Types and Dates of Billings and Amounts Involved: \$5,000,000 LUMP SUM PAYMENT

Comments: \$500/LAN

**JUNCTION SETTLEMENT AGREEMENT
St. Leonard, NB to Madawaska, ME**

THIS JUNCTION SETTLEMENT AGREEMENT made as of the first day of March, 2001

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY,
incorporated under the laws of Canada

(hereinafter called "CN")

AND

**BANGOR & AROOSTOOK RAILWAY
VAN BUREN BRIDGE COMPANY**
(hereinafter called "BAR")

Wholly owned subsidiaries of

IRON ROAD RAILWAYS INCORPORATED,
incorporated under the laws of the
State of Delaware

WHEREAS CN and BAR have separate property interests in and separately operate over rail lines in New Brunswick and Maine;

WHEREAS CN and BAR desire to improve the overall efficiency of rail transportation to, from and via the CN/BAR interchange in St. Leonard, New Brunswick;

WHEREAS BAR has agreed to provide transportation services for the account of CN for movements from and to Fraser Paper at Madawaska, ME located on the BAR, as specified within the following agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants and agreement hereinafter set out, the parties hereto agree as follows:

1. Definitions and Scope of this Agreement

In this Agreement and the Schedules hereto, unless the context otherwise requires:

- 1.1. "AAR" means the Association of American Railroads;
- 1.2. "Applicable Rules" means the usual rules, regulations and agreements between Class I Railways in Canada covering the interchange of cars and without limitation of the generality of the foregoing, shall include the AAR Car Service Agreement now or hereinafter in effect, the AAR Field Manual of Interchange Rules now or hereinafter in effect, the AAR Office Manual of Interchange Rules now or hereinafter in effect, the AAR Rules Governing the Loading of Commodities now or hereinafter in effect, and any applicable rules and regulations now or hereinafter in force of the NTA or other authority having jurisdiction;
- 1.3. "CN Car" means a loaded or empty freight car irrespective of such car's ownership or markings which is placed on the CN/BAR interchange pursuant to this Agreement and whose loaded route is designated by CN or a customer to be via CN or CN and its connections;
- 1.4. "CN/BAR interchange in St. Leonard" means that interchange, located at Milepoint 194.1 of CN's Napadogan subdivision Milepoint 0.70 of the Van Buren Bridge Company;
- 1.5. "Customer's Facilities" means the teamtrack facility or privately owned or leased siding serving a customer;
- 1.6. "Effective Date" means the date first hereinabove written;
- 1.7. "CTA" means the Canadian Transportation Agency of Canada and any successor of such Agency or to the functions thereof;
- 1.8. "STB" means the Surface Transportation Board and any successor of such Agency or to the functions thereof;

2. Lump sum payment

In consideration of services to be provided under this agreement, CN will pay to Iron Road Railways Inc. as agent for the Bangor & Aroostook Railway, an amount of five million dollars (\$5,000,000) in U.S. funds. This payment is contingent upon:

- The execution of this junction settlement agreement;
- The execution of the St. Leonard to Madawaska trackage rights agreement (attached);
- The execution of the grant of an easement on the property underlying the St. Leonard to Madawaska trackage, and the consent and subordination of the first lien-holder;
- The approval by the Surface Transportation Board of the Notice of Exemption for both the trackage rights and the easement.

The \$ 5 million dollar payment will be made by CN to Iron Road Railways Incorporated, as agent for BAR, via electronic funds transfer, once these contingent conditions have been completed, to CN's sole satisfaction.

1. Haulage services

BAR will provide haulage service for the account of CN between the CN/BAR interchange in St. Leonard, NB and the Fraser Paper mill located on the BAR at Milepoint 0.0 of the Van Buren subdivision in Madawaska, ME;

CN will act as waybill carrier and will be responsible for establishing rates, contracts, routes and divisions.

2. Haulage Fees

BAR will be compensated by CN at a rate of \$500 per loaded car (the "Current Charge"), such rate to be paid in U.S. currency. Reporting shall be made weekly for the period ended at midnight on the prior Friday, and payment shall be made by electronic funds transfer within 72 hours of the receipt of the report (by facsimile or electronic message as the parties may agree) to the account designated in writing by BAR from time to time.

3. Revision of Current Charge

The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of March following the anniversary date to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroad (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wages rates and supplements combined (excluding fuel): Indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year as related to the index for the previous calendar year, and applying that percent to the Current Charge.

By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel) final index figure for 1998; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 1999; "C" to be the Current Charge; and "D" to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:

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

$(D \times C) - C =$ revised Current Charge effective July 1 of the year being revised.

In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organisation discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.

At the option of BAR, or CN, the compensation provided for in this Agreement shall be open for renegotiation every five (5) years from the Commencement Date, as hereinafter defined. In the event the parties fail to reach agreement, the terms of compensation provided in this Agreement will continue in effect until an agreement is concluded. Such failure to conclude an agreement shall not constitute a breach of this Agreement, and the parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled.

4. Equipment and blocking

CN will assume the responsibility for supplying freight cars for movements subject to this agreement. BAR will be entitled to a maximum of 144 hours of per diem reclaim on CN equipment.

BAR shall handle loaded and empty CN Cars, respectively, with the same diligence and speed as they would handle cars for their own account.

CN and BAR will cooperate in car handling matters to fulfill customer needs according to the instructions of customers or the party hereto for whom the service is being performed.

CN and BAR management may arrange to exchange blocking and marshalling services from time to time, by mutual agreement, but are not required to do so under the terms of this agreement.

BAR shall not be obligated to receive empty cars for loading in excess of actual orders received by CN from Fraser.

BAR shall have the right to provide empty equipment for outbound loading if CN is unable to provide enough cars to meet Fraser orders; in such case, cars shall be deemed interchanged to CN upon delivery empty to Fraser.

5. Marketing

Nothing in this Agreement is intended to limit or otherwise minimize competition between the parties. Each party is free to fully market its services in each of the areas described herein to the same extent as existed prior to this Agreement, including but not limited to confidential contract rates, direct customer contracts, competitive pricing and other service agreements. This Agreement is intended solely as a long term private service contract between the parties.

Under this Agreement, CN freight rates will apply to traffic BAR handles on behalf of CN. There will be no additional charges from either party to CN customers as a result of this Agreement, except for the provision of ancillary services (such as intra-plant switching), as are customary within the rail industry.

6. Compliance with Applicable Rules

All cars and lading handled under the terms of this Agreement shall become subject mutatis mutandis to the Applicable Rules provided that any benefits from third party agreements covering such cars and lading relative to indemnities, releases and liabilities for death, personal injury or property damage to which CN may be entitled shall be made available to BAR, or to which BAR may be entitled shall be made available to CN, to the extent provided thereunder. All cars received in interchange shall be mechanically acceptable in accordance with the Applicable Rules.

7. Term

This agreement will remain in place for a period of five years, commencing with the effective date of this agreement, and may be renewed for additional five-year terms by mutual consent.

8. Loss and Damage

CN shall be solely responsible for all Loss or Damage to lading in cars in its account.

BAR shall exercise reasonable diligence in the handling of cars under this agreement to accomplish the through movement without undue delay. BAR shall have exclusive control of the management, operation and scheduling of the cars while on BAR's line of railroad. The cars shall be handled by BAR in common with other cars of BAR over the same route and shall receive equal treatment in all respects with the other cars being handled over the same route.

BAR shall be solely responsible for all Loss or Damage to CN equipment while on BAR property

9. Disputes

Any differences which may arise under this Agreement, either as to its construction or respecting its being carried out according to the true intent and meaning thereof or as to the terms upon which it is to be renewed pursuant to Section 8 herein shall, if it cannot be amicably adjusted by the parties hereto, be referred to arbitration under the applicable provisions of the laws of the State of Maine..

10. Liability

BAR shall indemnify and save harmless CN, its subsidiaries, affiliates, officers, employees and agents, from and against any and all liability, claims, losses, damages, costs and expenses (including attorney's fees) for locomotives, cars and lading, all other property of the parties hereto or of any other person or persons, and for death of or injury to any person or persons (including but not limited to employees of BAR and CN) due to any cause whatsoever arising from or growing out of BAR's performance of train operations or any other services pursuant to this agreement. Notwithstanding the foregoing, said indemnification shall not apply to damages caused solely by the willful and wanton misconduct of a CN train crew.

12. Miscellaneous

Mutual Agreement. Wherever this Agreement calls for the mutual agreement of the parties, CN and BAR shall use reasonable and good faith efforts to achieve mutual agreement, provided, however, that the failure for whatever reason to achieve any mutual agreement shall not in any way relieve either party of its obligation under this Agreement nor shall it be grounds for termination of this Agreement.

Entire Agreement. This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all negotiations, representations, prior discussions and preliminary agreements between the parties hereto relating to the subject matter hereof.

Cooperation. Each party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as the other party may reasonably request or as may be reasonably necessary or appropriate to effectuate, consummate or perform any of the terms, provisions or conditions of this Agreement. Each party shall seek and obtain any regulatory approvals, now or at any future time, obtain any regulatory approvals, necessary and required in connection with any transactions contemplated by this Agreement. Each party shall cooperate with the other in making any such regulatory applications.

Successors/Non-assignment. This Agreement shall inure to and bind the successors and assigns of the respective parties hereto, provided, however, that nothing herein shall be construed to permit the sale or assignment of either party's interest or obligations hereunder to any third party. Each party acknowledges that each party's rights under this Agreement are personal and unique. Accordingly, each party acknowledges and covenants that it shall not and may not sell, assign, transfer, pledge or encumber any of its rights or delegate any of its responsibilities or other obligations under the terms of this Agreement without the prior written consent of the other party. Any attempt at such a transfer, assignment, sale, pledge, encumbrance or delegation by either party, without the prior written consent of the other party, shall be void ab initio. Notwithstanding the foregoing, either party may assign its interests under this Agreement to an affiliate, subsidiary or successor of its parent company, provided however, that such assignment shall not relieve such assignor of its obligations or liabilities hereunder; and further provided that nothing in this Article shall preclude BAR from assigning this agreement as part of a sale of all or substantially all of its assets.

Access to Property. Nothing in this agreement confers to CN the right to access the property of BAR, or to provide direct service to the customers of BAR with its own employees.

13. Notices

Except when actual receipt is expressly required by the terms hereof or unless otherwise provided herein, notice is considered given when delivered either by personal delivery, commercial carrier or facsimile transmission to the party or person intended as follows:

Notice to CN:

Canadian National Railway
Eastern Division
MacMillan Yard
1 Administration Road
Concord, Ontario
CANADAL4K 1B9

Attention:

Vice-President - Commercial Development

Notice to BAR:

Bangor & Aroostook Railroad Company
RR 2, Box 45 - Northern Maine Junction
Bangor ME 04401-9602
USA

Attention:

President

Either party may require, by notice given at any time or from time to time, subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both, provided however, that a P.O. Box shall not be considered to be an address for purposes of this Agreement. Notices given before actual receipt of notice of change shall not be invalidated by the change.

Waiver. Any waiver by either party hereto of any breach of any kind or character whatsoever by the other party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement on the part of the other party. No course of dealing or performance between the parties hereto, nor any delay in exercising any rights or remedies hereunder or otherwise, shall operate as a waiver of any of the rights or remedies of either party hereto.

Severability. The provisions of this Agreement are severable and should any provision hereof be void, voidable or unenforceable under any applicable law, such void, voidable or unenforceable provision shall not affect or invalidate any other provisions of this Agreement, which shall continue to govern the relative rights and duties of the parties as

though the void, voidable or unenforceable provision were not a part hereof. In addition, it is the intention and agreement of the parties that all of the terms and conditions hereof be enforced to the fullest extent permitted by law.

Modification. This Agreement may not be modified except by a written instrument duly signed by the parties hereto.

Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and as executed shall constitute one agreement, binding on both parties even though both parties do not sign the same counterpart.

Headings. The headings of sections and subsections used in this Agreement are for convenience only and are not part of its operative language. They shall not be used to affect the construction of any provisions hereof.

Acknowledgment. In executing this Agreement, each party acknowledges that it does not rely on any inducements, promises or representations of the other party or any agent of the other party, other than the terms and conditions specifically set forth in this Agreement.

Construction. This Agreement shall be construed as though both parties had drafted it.

Relationship. The parties hereto do not intend this Agreement or the relationship hereunder to constitute a joint venture, partnership, franchise, agency or employment relationship between them of any kind. The parties hereto agree that they are independent contractors in performing this Agreement and may not bind each other as a result of any action they may take in performing under this Agreement. Under no circumstances shall one party's employees be construed to be employees of the other party, nor shall one party's employees be entitled to participate in the profit sharing, pension or other plans established for the benefit of the other party's employees.

No Third Party Beneficiaries. The representations, warranties, covenants and agreements of the parties set forth in this Agreement are not intended for, nor shall they be for the benefit of or enforceable by, any person not a party hereto.

Governing Law. This Agreement shall be deemed to have been executed in the State of Maine, and shall be interpreted, construed and enforced according to, and governed by, the laws of the State of Maine without giving effect to any conflict of laws provisions. Each party hereby expressly submits itself to the exclusive, personal jurisdiction of the courts situate in the State of Maine, with respect to any and all claims, demands or causes of action asserted or filed by any party in any way relating to, or arising out of, this Agreement or the subject matter hereof.

Compliance with Law. Each party shall comply, at its own expense, with the provisions of all laws, regulations, orders, licensing requirements and codes which are applicable to such party, to its performance of this Agreement, or to its status as an employer.

Confidentiality. CN and BAR agree that this Agreement shall be treated as confidential and shall not be disclosed to any third party (other than to a government or regulatory authority entitled to the disclosure thereof by law) except in situations where a valid judicial decision may order this Agreement to be disclosed either in whole or in part. A party submitting this Agreement to such governmental or regulatory authority shall request the governmental or regulatory authority to preserve the confidentiality of the business sensitive portions.

14. IN WITNESS WHEREOF the parties have duly executed and delivered this Agreement as of the date first written above.

CANADIAN NATIONAL RAILWAY COMPANY

By: _____

BANGOR & AROOSTOOK RAILWAY

By: Frederic W. G. J.

VAN BUREN BRIDGE COMPANY

By: Frederic W. G. J.

EXHIBIT

3

**TRACKAGE RIGHTS AGREEMENT
St. Leonard, NB to Madawaska, ME**

THIS AGREEMENT, entered into as of this _____ day of March 2001, by and among the Bangor & Aroostook Railway Company and the Van Buren Bridge Company, wholly-owned subsidiaries of Iron Road Railways Incorporated, a Delaware corporation (hereinafter jointly referred to as "BAR"), and CANADIAN NATIONAL RAILWAY COMPANY, a corporation continued under the Canada Business Corporation Act, hereinafter referred to as "CN";

WITNESSETH:

WHEREAS, CN has requested trackage rights over the line of railroad owned by BAR, between Milepost (MP) 0.0 Madawaska, ME to MP 22.72 Canadian Junction, thence over the line of railroad owned by the Van Buren Bridge Company and operated by BAR, from Milepost 0.0 (Canadian Junction) to the point of convergence with CN, located at MP 194.1 (approximately) of CN's Napadogan subdivision, near St. Leonard, NB:

WHEREAS, BAR is agreeable to granting such rights to CN under the following terms and conditions:

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

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, BAR hereby grants to CN 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 BAR's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "I" (hereinafter referred to as the "Subject Trackage"):

Between Milepost (MP) 0.0 Madawaska, ME to MP 22.72 Canadian Junction, thence over the line of railroad owned by the Van Buren Bridge Company and operated by BAR, from Milepost 0.0 (Canadian Junction) to the point of convergence with CN, located at MP 194.1 (approximately) of CN's Napadogan subdivision, near St. Leonard, NB, a total distance of approximately 25.1 miles.

ARTICLE 2. USE OF SUBJECT TRACKAGE

(a) CN shall have the right to enter and exit the Subject Trackage only at the connections MP 0.70 at St. Leonard, NB and at MP 0.0, Madawaska subdivision, Madawaska, ME, for the receipt or delivery of local traffic from and to the Fraser / Nexfor facility located in Madawaska, ME. CN shall also have the right of onward movement to Van Buren as may be required exclusively for operating purposes to turn trains.

(b) CN shall have the right to use the Subject Trackage in either direction.

(c) CN's use of the Subject Trackage shall be in common with BAR, and any other users of the Subject Trackage, and BAR's right to use of the Subject Trackage shall not be diminished by this Agreement. BAR shall retain the exclusive right to grant to other rail carriers, rights of any nature on the Subject Trackage.

(d) Except as may otherwise be provided by this Agreement, CN shall not use any part of the Subject Trackage for the purpose of switching, storage, or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of BAR, preclude the emergency use by CN of such auxiliary tracks as may be designated by BAR for such purposes.

(e) BAR shall have exclusive control of the management and operation of the Subject Trackage. CN shall not have any claim against BAR for liability of any kind in the event the use of the Subject Trackage by CN is interrupted or delayed at any time from any cause.

ARTICLE 3. RESTRICTIONS ON USE

(a) The Trackage Rights herein granted are granted for the sole purpose of CN using same for handling of Fraser / Nexfor traffic only.

(b) CN shall be authorised to operate up to two (2) trains in each direction over the Subject Trackage during any twenty-four (24) hour period.

(d) Except as otherwise provided in Article 11(g) of this Agreement, there shall be no change of CN crews on the Subject Trackage.

(e) The Subject Trackage shall not be used by CN for third party haulage or third party carrier access to, or use of, via lease, trackage rights, haulage or any other operating arrangement. A subsidiary or affiliated company of CN shall not be considered to be a third party for the purposes of this agreement.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

(a) When operating over the Subject Trackage, CN's locomotives and crews will be equipped to communicate with the appropriate BAR dispatcher/operator on radio frequencies normally used by BAR in directing train movements on the Subject Trackage.

(b) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision. All control and usage will be subject to the approval of BAR's representative or his designee.

(c) Before CN locomotives enter onto Subject Trackage, CN shall request permission from the appropriate dispatcher/operator or other designated representatives(s). Further, CN shall ascertain that said trackage is clear and shall await confirmation from the appropriate dispatcher/operator(s) or representative that such permission has been issued to allow CN's movements on or over Subject Trackage. Upon completing its operations and clearing Subject Trackage, CN will notify the appropriate dispatcher/operator(s) or designated representative(s) that CN has completed its operations and that its equipment has cleared Subject Trackage. Once CN has notified the appropriate dispatcher/operator(s) or representatives that CN has cleared Subject Trackage, CN shall not reenter the Subject Trackage without again obtaining permission from the appropriate dispatcher/operator(s). CN shall provide and maintain at its expense all communication facilities needed by CN for its operations over the Subject Trackage.

ARTICLE 5. COMPENSATION

(a) For the use of the Subject Trackage, CN shall pay to BAR, the sum of \$100 (U.S. dollars) per loaded or empty car (hereinafter referred to as the "Current Charge").

(b) CN shall pay BAR a sum computed by multiplying: (i) the Current Charge, as may be revised in accordance with Article 6 by (ii) the number of loaded and empty cars moved by CN

with its own crews and power over the Subject Trackage. No charges will be levied for locomotives. With respect to articulated units, the number of cars shall be determined by the MR Car Type Code as defined in the UMLER Specification Manual. The second indicator in the Car Type Code field covering codes "Q" and "5" will be the factor in determining the car count for an articulated unit. For example, MR Car Type code "S566" would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units subject to change upon development of technology to separate units by Car Nos.)

(c) BAR shall on or about the tenth day of each month render billing to CN for CN's previous month's use of the Subject Trackage computed in accordance with the terms and conditions of this Agreement.

(d) CN shall furnish to BAR, in care of (contact to be provided.....), at the end of each month, a statement of the number of loaded and empty cars operated over the Subject Trackage during the month. CN shall furnish BAR all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. This procedure will be required at the time the Association of American Railroads (AAR) defines the standard reporting procedure for trackage rights carriers. The minimal data requirements will be determined between BAR and CN.

ARTICLE 6. REVISION OF CURRENT CHARGE

(a) The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of March following the anniversary date to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroad (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wages rates and supplements combined (excluding fuel): indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year as related to the index for the previous calendar year, and applying that percent to the Current Charge.

(b) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 1998; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 1999; "C" to be the Current Charge; and "D" to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:

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

$$(2) \quad (D \times C) \div C = \text{revised Current Charge effective July 1 of the year being revised.}$$

(c) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organisation discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.

(d) At the option of BAR, or CN, the compensation provided for in this Agreement shall be open for renegotiation every five (5) years from the Commencement Date, as hereinafter defined. In the event the parties fail to reach agreement, the terms of compensation provided in this Agreement will continue in effect until an agreement is concluded. Such failure to conclude an agreement shall not constitute a breach of this Agreement, and the parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled.

ARTICLE 7. PAYMENT OF BILLS

(a) All payments called for under this Agreement shall be made by CN 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 shall be adjusted in the accounts of a subsequent month. The records of the parties, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

(b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by BAR at the time any work is performed by BAR for CN.

ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE

(a) BAR shall maintain, repair and renew the Subject Trackage at its own expense and with its own supervision and labor. BAR shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but BAR does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. BAR shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, CN shall not by reason of failure or neglect on the part of BAR to maintain, repair or renew the Subject Trackage, have or make any claim or demand

against BAR, or its subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by CN resulting from any such failure or neglect.

(b) BAR shall perform at the expense of CN, such additional maintenance as CN may reasonably require or request.

ARTICLE 9. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

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

(b) Any additional connections to the Subject Trackage which may be required by CN, for CN's exclusive use, shall be subject to BAR's approval, which shall not be unreasonably withheld (including design) and shall be constructed, maintained, repaired and renewed as follows:

(i) CN or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of CN or others which connect the respective lines of the parties hereto.

(ii) BAR shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of CN, such portions of the tracks located on the right-of-way of BAR which connect the respective lines of the parties hereto. Except as otherwise covered by a separate agreement among the parties to the Agreement, upon termination of this Agreement, BAR may at its option remove portions of trackage and appurtenances located on property of BAR, at the sole cost and expense of CN. The salvage material removed shall be released to CN or, as otherwise agreed upon, BAR will credit CN the current fair market value for said salvage.

ARTICLE 10. ADDITIONS, RETIREMENTS AND ALTERATIONS

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

(b) If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate CN's operations beyond that required by BAR to accommodate its operations, BAR shall make such changes in or additions and betterments to the Subject Trackage and construct the additional or altered facilities, and CN shall pay to BAR the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 11. MANAGEMENT AND OPERATIONS

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

(b) CN in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of BAR, and the movement of CN's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of BAR. CN'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 maximum authorized freight speeds as provided by BAR's operating rules and regulations without the prior consent of BAR, which consent shall not be unreasonably withheld. CN shall indemnify, protect, defend, and save harmless BAR and BAR and their subsidiaries and affiliates, and all of their directors, officers, agents and employees from and against all liabilities when attributable to the failure of CN to comply with the provisions of this subsection.

(c) CN shall make such arrangements with BAR as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and CN shall pay to BAR, upon receipt of bills therefor, any cost incurred by BAR in connection with the qualification of such employees of CN, as well as the cost

of pilots furnished by BAR , until such time as such employees are deemed by the appropriate examining officer of BAR to be properly qualified for operation as herein contemplated.

(d) In the event of any investigation or hearing concerning the violation of any operating rule or practice by CN's employees while on the Subject Trackage, CN shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by CN, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to CN's employee or employees required to attend such hearings. BAR shall provide regulations, supplements and safety rules to CN at no cost. After the investigation is concluded, BAR shall promptly furnish CN with two copies of the transcript and a recommendation as to the discipline to be assessed. CN's Transportation Officer shall arrange to assess discipline, subject to receipt of BAR 's recommended discipline, within the applicable time limits. If BAR recommends dismissal, CN reserves the right to change the recommendation to the extent of barring the individual from the Subject Trackage.

(e) BAR shall have the right to exclude from BAR's trackage, any employee of CN, except officers, determined by above, to be in violation of BAR 's rules, regulations, orders, practices, or instructions issued by BAR 's Timetable or otherwise. CN shall release, indemnify, defend, and save harmless BAR and BAR and their subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion. In a major offense such as violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules, wherein BAR desire to bar CN's employee from the Subject Trackage pending an investigation by BAR , immediate verbal notification shall be given to the appropriate Transportation Officer of CN so that proper written notice can be issued to the employee.

(e) The trains, locomotives, cars and equipment of CN and BAR as well as any future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to any party and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(g) CN and BAR intend that there shall be no recrewing of CN trains on the Subject Trackage and CN shall use its best efforts to assure that no such recrewing occurs.

(h) In the event that a train of CN shall be forced to stop on the Subject Trackage, and such stoppage is due to insufficient hours of service remaining among CN's crew and no relief crews are readily available, or due to mechanical failure of CN's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of CN fails to maintain the speed required by BAR on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of CN's trains on the Subject Trackage, BAR shall have the option to furnish motive power or such other assistance (including but not limited to the right to

recrew CN'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 CN shall reimburse BAR for the cost of rendering any such assistance.

(i) 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 BAR, and CN shall reimburse BAR for the cost thereof.

(j) In the event BAR and CN agree that BAR should retain employees or provide additional employees for the sole benefit of CN, the parties hereto shall enter into a separate agreement under which CN shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by BAR and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 12. MILEAGE AND CAR HIRE

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

ARTICLE 13. CLEARING OF WRECKS

Whenever CN's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, BAR shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, 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 CN at the time of such wreck, shall be promptly delivered to it.

ARTICLE 14. LIABILITY

The responsibility and liability between the parties for (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by any of the parties to this Agreement or by third party users, all as described herein, 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 either BAR or CN, then the using party is solely responsible for the Loss, even if caused partially or completely by the other party.

(b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of two or more parties to this Agreement, then: (i) CN and BAR are each solely responsible for any Loss to their own employees, locomotives and equipment in their own accounts, including lading, and (ii) CN and BAR are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between them as to the cause of the Loss, unless the Loss was caused solely by one party. In that event, the party causing the Loss is solely responsible for the entire Loss.

(c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both CN and any other third party user of the Subject Trackage not a party to this Agreement, then CN's responsibility for the Loss shall be apportioned in the manner specified in subparagraph (b) with the other third party user being considered BAR for the purpose of determining CN'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 a 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 their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers, agents, or employees.

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

(f) For purposes of determining liability, pilots furnished by BAR to CN pursuant to this Agreement shall be considered as the employees of CN while such pilots are on board or getting on or off trains of CN.

(g) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 9 (b) (ii), all work performed by BAR shall be deemed performed for the sole benefit of CN, and CN 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 BAR. CN shall protect, indemnify, and save harmless BAR and BAR and their 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 CN is responsible.

(h) If any suit or action shall be brought against a party to this Agreement for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defence of such suit and shall pay a proportionate part of the judgement and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

(i) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.

ARTICLE 15. CLAIMS

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

(b) CN shall 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.

(c) In the event a claim or suit is asserted against a party to this Agreement which is the other party's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.

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

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, no 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).

(f) Each party agrees to indemnify and hold harmless the other party and its 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 (i) protection of its own employees under employee protective conditions which may be imposed, and (ii) grievances filed by its own employee arising under its collective bargaining agreements with its employees.

(g) Each party shall assume and hold the other party harmless from all employee claims by its employees 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.

(h) It is understood that nothing in this 15 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 14.

ARTICLE 16. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of CN 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 BAR, BAR shall have the right at its option, after first giving thirty (30) days written notice thereof by personal delivery, commercial carrier or facsimile transmission, and notwithstanding any waiver by BAR and/or BAR of any prior breach thereof, to terminate this Agreement and CN's use of the Subject Trackage. The exercise of such right by BAR shall not impair BAR's rights under this Agreement or any cause or causes of action it may have against CN for the recovery of damages.

ARTICLE 17. REGULATORY APPROVAL

(a) Should this Agreement require the prior approval of the Surface Transportation Board (STB), CN at its own cost and expense will initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. BAR shall assist and support efforts of CN to secure any necessary STB approval of this Agreement.

ARTICLE 18. ABANDONMENT OF SUBJECT TRACKAGE

(a) Notwithstanding the provisions of 19 of this Agreement, BAR may abandon the Subject Trackage or any portion thereof, during the term of this Agreement or any renewals thereof, upon giving CN not less than ninety (90) days' notice of BAR's intent to abandon. In the event regulatory authority is required to effect such abandonment, CN will not interfere with BAR's action to seek and to exercise such authority. In the event regulatory authority is required for CN to discontinue its own operations over the Subject Trackage, CN will seek and diligently pursue such regulatory authority at the same time that BAR seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as CN may do so in accordance with applicable statutes and regulations, unless CN intends to acquire the Subject Trackage from BAR pursuant to 49 U.S.C. Section 10904 or other similar provision.

(b) CN 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 CN or another party acquire the Subject Trackage for continued rail use, CN shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by BAR for abandonment of the Subject Trackage by their aforesaid notice to CN, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of CN's operations is not required, CN shall discontinue its operations hereunder on the date that BAR is authorized to abandon the Subject Trackage. Upon discontinuance of CN'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 any 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.

ARTICLE 19. TERM

(a) This Agreement shall be effective the date first written above and shall remain in full force for 99 years. In the event of an assignment, sale or other disposition of all or any portion of the Subject Trackage (including an assignment, sale or other disposition of the Subject Trackage to any subsidiary or affiliate of BAR), BAR shall assign its interests in this Agreement to the assignee, purchaser or other transferee of the Subject Trackage involved. Agreement may be terminated at any time by CN upon six (6) months' advance written notice to the other parties.

(b) Termination of this Agreement shall not relieve or release any party hereto from any obligation 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.

ARTICLE 20. ARBITRATION

(a) **Disputes:** Any irreconcilable dispute between the parties with respect to this Agreement shall be resolved by submitting it to arbitration pursuant to the provisions of this Article. The decision of the arbitrators shall be final and conclusive upon the parties hereto.

(b) **Arbitration Procedure:** The claim or controversy shall be submitted to disinterested arbitrators with experience in the field of rail transportation, one of whom shall be appointed by CN, and the other of whom shall be appointed by the other party or parties to this Agreement; the two arbitrators so chosen shall select a third arbitrator. If the arbitrators are unable to agree on the selection of such an arbitrator within thirty (30) days after their appointment, the arbitrators shall then proceed to seek a third arbitrator in accordance with the rules and procedures of the Commercial Arbitration Rules of the American Arbitration Association (AAA) then in effect.

(c) **Authority of Arbitrators:** The arbitrators shall have no power to change any of the provisions of this Agreement in any respect (nor shall the arbitrator have the power to make an award of reformation) and the jurisdiction of the arbitrators is hereby expressly limited accordingly. The arbitrators shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

(d) **Discovery:** The arbitrators shall determine on motion of either party to a dispute whether or to what extent that discovery in the nature of that allowed by the Federal Rules of Civil Procedure (Rule 26-37) will be afforded each party. Any dispute with respect to such discovery shall be settled by the arbitrators.

(e) **Costs of Arbitration:** Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs, and expense of the arbitrators, if any, shall be borne equally by the parties hereto.

ARTICLE 21. SUCCESSORS AND ASSIGNS

Except as provided by Article 19(a), neither this Agreement nor any of the rights, interests or obligations hereunder, shall be assigned by any party, including by operation of law, without the prior written consent of the other parties, except to a controlled subsidiary.

ARTICLE 22. 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 personal delivery, commercial carrier or facsimile transmission, or by such other means as the parties may agree, and shall be addressed as follows:

If to BAR :

Bangor & Aroostook Railroad Company
RR 2, Box 45 - Northern Maine Junction
Bangor ME 04401-9602
USA

Attention:

President

If to CN:

Canadian National Railway
Eastern Division
MacMillan Yard
1 Administration Road
Concord, Ontario, L4K 1B9

Attention:

Vice-President - Commercial Development

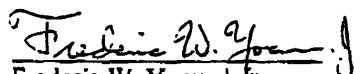
Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

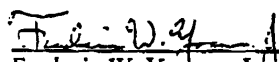
ARTICLE 23. GENERAL PROVISIONS

- (a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against either of the parties hereto.
- (b) This Agreement contains the entire understanding of the parties hereto.
- (c) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- (d) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- (e) All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- (f) 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.
- (g) 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.
- (h) Neither party hereto may disclose the provisions of this Agreement to another party, except a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling 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 any party.

(i) The terms and articles of this Agreement shall be interpreted and applied as provided within the laws of the State of Maine

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


Frederic W. Yocum, Jr.
President
Bangor & Aroostook Railroad Company

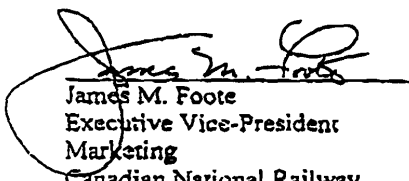

Frederic W. Yocum, Jr.
President
Van Buren Bridge Company

E. Hunter Harrison
Executive Vice-President and Chief Operating Officer
Canadian National Railway

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

Frederic W. Yocum, Jr.
President
Bangor & Aroostook Railroad Company

Frederic W. Yocum, Jr.
President
Van Buren Bridge Company


James M. Foote
Executive Vice-President
Marketing
Canadian National Railway

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1-207-774-7489

T-762 P.51/74 F-555

14 IN WITNESS WHEREOF the parties have duly executed and delivered this Agreement as of the date first written above.

CANADIAN NATIONAL RAILWAY COMPANY

By: _____

James M. Foote
Executive Vice-President
Marketing

BANGOR & AROOSTOOK RAILWAY

By: _____

VAN BUREN BRIDGE COMPANY

By: _____

6

P.10/10

MAR 21 '01 03:02PM MARCH.LOG.



Bk 1258 Pg 102 #3526

07-16-2001 @ 01:17p

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that BANGOR AND AROOSTOOK RAILWAY COMPANY, a Maine corporation, whose address is Northern Main Junction Park, Rural Route 2, Box 45, Bangor, Maine 04401-9502, and VAN BUREN BRIDGE COMPANY, a Maine corporation, whose address is Northern Main Junction Park, Rural Route 2, Box 45, Bangor, Maine 04401-9502, (collectively "Grantor"), for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, does hereby grant unto WATERLOO RAILWAY COMPANY, a Delaware corporation, whose address is 455 N. Cityfront Plaza Drive, Chicago, Illinois 60611, ("Grantee"), its successors and assigns, a perpetual, non-exclusive EASEMENT for the use and benefit of Grantee, its successors and assigns, for the uses and purposes defined and described in that certain Trackage Rights Agreement dated March 14, 2001 by and between Grantor and Canadian National Railway Company ("CN") (the "Trackage Rights Agreement"), over, upon and across the premises described in Exhibit A attached hereto and incorporated herein by reference (the "Easement Area"), situated in the County of Aroostook, State of Maine.

Grantor is the owner in fee simple of the Easement Area, with full right authority to grant this Easement. Grantor shall indemnify, defend and hold harmless Grantee from and against all claims, liability, cost and expense, including attorneys' fees, incurred by Grantee as a result of any defect or insufficiency of Grantor's title or claim of any pre-existing lien or superior rights.

Grantee, for itself, its licensees, successors and assigns, shall have the right to make every use of the Easement Area for Grantee's purposes in accordance with the terms and provisions of the Trackage Rights Agreement. Grantee shall have the right to assign the operating rights hereunder to CN or any subsidiary of CN, to operate over the Easement Area in accordance with the Trackage Rights Agreement.

Grantor shall not make any use of the Easement Area which is inconsistent with the uses and the purposes for which this Easement has been granted.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns for the purposes and upon the terms and conditions specified herein.

This indenture granting an Easement, together with all the covenants contained herein, shall run with the land and shall be binding upon the successors, grantees, and assigns of the respective parties hereto.

Bk 1258 Pg103 #3520

IN WITNESS WHEREOF, Grantor has caused this Easement to be duly
executed on this 15th day of Nov., 2000.

GRANTOR:

**BANGOR AND AROOSTOOK RAILWAY
COMPANY, a Maine Corporation**By: [Signature]
Its: President**VAN BUREN BRIDGE COMPANY, a Maine
Corporation**By: [Signature]
Its: President

BK 1258 Pg 104 #352

STATE OF Maryland)
COUNTY OF Baltimore) SS

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Fredrick W. Young, personally known to me to be the President of BANGOR AND AROOSTOOK RAILWAY COMPANY, a Maine corporation, being the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally, acknowledged that he signed and delivered the said instrument and caused the seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16 day of March, 2001.

Carole E. Williams
Notary Public

Bk 1258 Pg105 #3520

STATE OF Maryland)
) SS
COUNTY OF Baltimore)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Frederic Wilson personally known to me to be the President of VAN BUREN BRIDGE COMPANY, a Maine corporation, being the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument and caused the seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16 day of March, 2001.

Carol E. Skellern
Notary Public



casement.1

Ak 1258 Pg186 #3520

Consent and Subordination

The undersigned, BankAustria/Creditanstalt Corporate Finance, Inc., ("BankAustria") the holder of the first mortgage lien encumbering the Easement Area, hereby acknowledges and consents to the grant of the foregoing Easement in favor of Waterloo Railway Company ("Waterloo"), and BankAustria further agrees that provided Waterloo is not in violation of the Easement, Bank Austria shall not interfere with the quiet enjoyment by Waterloo of its rights pursuant to the foregoing Easement.

BANKAUSTRIA/CREDITANSTALT
CORPORATE FINANCE, INC.

By: A.W. Seidel

Its: _____

A.W. Seidel
Senior Vice President

STATE OF Connecticut)
COUNTY OF Fairfield) SS

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that A.W. Seidel, personally known to me to be the Senior Vice President of BANKAUSTRIA/CREDITANSTALT CORPORATE FINANCE, INC., a _____ corporation, being the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument and caused the seal of said corporation to be affixed therein, pursuant to authority given by the Board of Directors of said corporation, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15th day of March, 2000.

Virginia A. Laverda
Notary Public

VIRGINIA A. LAVERDA
NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 31, 2003

BK 1258 Pg107, #3520

Acknowledged and consented to this 15 day of March, 2001BANKAUSTRIA/CREDITANSTALT
SBIC, Inc.By: A. W. SeidelIts: A. W. Seidel
Senior Vice President

I, the undersigned, a Notary Public in and for said County in the State aforesaid,
DO HEREBY CERTIFY that A. W. Seidel, personally known to me to be
the Senior Vice President of BANKAUSTRIA/SBIC INC., a
corporation, being the same person whose name is subscribed to the foregoing instrument,
appeared before me this day in person and severally acknowledged that he signed and
delivered the said instrument and caused the seal of said corporation to be affixed thereto,
pursuant to authority given by the Board of Directors of said corporation, as his own free
and voluntary act and as the free and voluntary act of said corporation, for the uses and
purposes therein set forth.

Given under my hand and notarial seal this 15 day of March, 2001.Virginia A. Laversa
Notary PublicVIRGINIA A. LAVERSA
NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 31, 2003

BN 1258 Pg108 #3520

Acknowledged and consented to this 15th day of March, 2001ALLFIRST FINANCIAL CENTER,
NATIONAL ASSOCIATION, as TrusteeBy: Robert D. Brown
In: ROBERT D. BROWN
VICE PRESIDENT

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Robert D. Brown, personally known to me to be the Vice President of ALLFIRST FINANCIAL CENTER, NATIONAL ASSOCIATION, as Trustee a Florida corporation, being the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument and caused the seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15th day of March, 2001.Delores K. Anderson
Notary PublicMy Commission Exp.
4/13/2002

BK 1258 Pg109 W3520

EXHIBIT A
to Easement

GRANTOR: Bangor & Aroostook Railroad Company

GRANTEE: Waterville Railway Company

REAL PROPERTY DESCRIPTION

Except as otherwise expressly provided by exclusion, reservation, or exception herein, the real property, interests in real property, easements, rights, rights of way, with the buildings, structures, and fixtures thereon and appurtenances thereto of every kind and description situated in the county of Aroostook in the State of Maine, bounded and described as follows:

A portion of the line of railroad known as the Van Buren Branch of the Bangor and Aroostook Railroad, all in the State of Maine, extending from a point of connection with the Main Line in Madawaska (Milepost 254.13, Milepost V0.0), and running through Madawaska, St. David, Grand Isle, Lills, Notre Dame, Parent, Violette, and Keegan, to Van Buren (Milepost V24.1), all in the County of Aroostook, a distance of about 24 miles, as the same is now laid out, located and constructed.

TOGETHER WITH all the rights or rights of way, roadbed, depot, depot buildings and grounds, station houses, station grounds, car houses, wood houses and other buildings, fuel houses, communication and signal facilities, water stations, water and coaling stations and grounds, coal sheds and other buildings, gravel pits, quarries, and real estate, store houses, dwelling houses, shops and other buildings, repair and machine shops now appertaining or which may hereafter appertain to the above-described branch of the railroad; also all superstructures, fences, trestles, bridges, wharves, piers, docks, culverts, crossings and sidings now appertaining or which may hereafter appertain to the above-described branch of the railroad; also all the privileges, rights and franchises incident and necessary to the ownership, maintenance and operation of the above-described branch of the railroad.

EXCLUDING AND EXCEPTING, however, from the foregoing, the following property, conveyed by the Company being the rail and related cross ties, tie joints, tie plates, switch ties, turnouts, switches, anchors and spikes located on the land described above, together with any and all replacements therefor and accessions thereto.

SUBJECT, however, to the following:

1.) All rights the public may have to use any roads, alleys, bridges, or streets crossing the railroad line; all streams, rivers, creeks and water ways passing under, across or through the

BK 1258 Pg 110 #3520

railroad line: all easements, leases, licenses, permits, reversions, remainders, public and private crossing agreements or contracts, of record or otherwise, affecting the railroad line; and to any pipes, wires, poles, cable, culverts, drainage courses or systems and appurtenances now existing and remaining in, on, under, over, across, and through the railroad line; together with the right of any person entitled thereto to maintain, repair, renew, replace, use and remove the same.

2.) Rights of the State of Maine under 23 M.R.S.A. Section 7105 referred to in Notice of Statutory Option by State of Maine Department of Transportation dated December 8, 1989 and recorded in the Arrostook (Northern) County Registry of Deeds in Book 795, Page 225.

3.) All outstanding real estate taxes, sewer, water and other municipal betterment assessments or charges.

Item Reel L17911 Highway from Van Buren Bridge to CIVIL Van Buren Branch

Bk 1256 Pg111 #3520

EXHIBIT A
to Easement

GRANTOR: Bangor & Aroostook Railroad Company

GRANTEE: Waterville Railway Company

REAL PROPERTY DESCRIPTION

Except as otherwise expressly provided by exclusion, reservation, or exception herein, the real property, interests in real property, easements, rights, rights of way, with the buildings, structures, and fixtures thereon and appurtenances thereto of every kind and description situated in the county of Aroostook in the State of Maine, bounded and described as follows:

A portion of the line of railroad known as the Van Buren Branch of the Bangor and Aroostook Railroad, all in the State of Maine, extending from a point of connection with the Main Line in Madawaska (Milepost 264.13, Milepost V0.0), and running through Madawaska, St. David, Grand Isle, Little, Notre Dame, Parent, Violenta, and Keegan, to Van Buren (Milepost V24.1), all in the County of Aroostook, a distance of about 24 miles, as the same is now laid out, located and constructed.

TOGETHER WITH all the right or rights of way, roadbed, depots, depot buildings and grounds, station houses, station grounds, car houses, wood houses and other buildings, fuel houses, communication and signal facilities, water stations, water and coaling stations and grounds, coal sheds and other buildings, gravel pits, quarries, and real estate, store houses, dwelling houses, shops and other buildings, repair and machine shops now appertaining or which may hereafter appertain to the above-described branch of the railroad; also all superstructures, fences, trestles, bridges, wharves, piers, docks, culverts, crossings and sidings now appertaining or which may hereafter appertain to the above-described branch of the railroad; also all the privileges, rights and franchises incident and necessary to the ownership, maintenance and operation of the above-described branch of the railroad.

EXCLUDING AND EXCEPTING, however, from the foregoing, the following property conveyed by the Company being the rail and related cross ties, tie joints, tie plates, switch ties, turnouts, switches, anchors and spikes located on the land described above, together with any and all replacements therefor and accessions thereto.

SUBJECT, however, to the following:

(.) All rights the public may have to use any roads, alleys, bridges, or streets crossing the railroad line; all streams, rivers, creeks and water ways passing under, across or through the

BK 1258 Pg 112 #3520

railroad line; all easements, leases, licenses, permits, reversions, remainders, public and private crossing agreements or contracts, of record or otherwise, affecting the railroad line; and to any pipes, wires, poles, cable, culverts, drainage courses or systems and appurtenances now existing and remaining in, on, under, over, across, and through the railroad line; together with the right of any person entitled thereto to maintain, repair, renew, replace, use and remove the same.

2.) Rights of the State of Maine under 21 M.R.S.A. Section 7105 referred to in Notice of Statutory Option by State of Maine Department of Transportation dated December 8, 1989 and recorded in the Arrostook (Northern) County Registry of Deeds in Book 795, Page 225.

3.) All outstanding real estate taxes, sewer, water and other municipal betterment assessments or charges.

This instrument Prepared by
(and return after recording to):
Cynthia A. Bergmann
Canadian National/Illinois Central
455 North Cityfront Plaza Drive
Chicago, Illinois 60611-5318
(312) 755-7600

Iron Road (TNR) easement from Van Rensselaer Bridge to TNR Van Rensselaer Branch

ATTEST: *Laurie M. Brown*
Register of Deeds
(N) Arrostook County