

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
May 14, 2026
Part of
Public Record

Finance Docket No. 36930

YOOKEL, INC. AND B & J GROUP, INC. -
PETITION FOR DECLARATORY ORDER

PETITION FOR DECLARATORY ORDER

Petitioners Yookel, Inc. ("Yookel") and B & J Group, Inc. ("B & J") (hereinafter, collectively, "Petitioners")¹ hereby respectfully petition the Surface Transportation Board ("STB" or "Board") for a declaratory order to eliminate uncertainty pursuant to its authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, finding that B & J must be provided more sufficient notice under the requirements of 49 C.F.R. § 1333.3 to allow CSX Transportation, Inc. ("CSX"), Norfolk Southern Railway ("NS"), or Consolidated Rail Corporation ("Conrail") to charge it demurrage as a warehousemen. Without more sufficient notice, the intent of the rule in § 1333.3 will be frustrated as warehousemen will still have inadequate awareness of their responsibility to pay demurrage charges in situations where they are directly served only by Conrail and have no contractual relationship with Conrail's two Class I parent railroads while having one with Conrail. This inadequate notice to warehousemen resulting in surprise demurrage invoices to them is exactly what the Board was trying to avoid when it enacted this notice rule in 2014.

1. Demurrage and the Warehousemen Liability Rule.

49 U.S.C. § 10746 provides as follows:

¹ Yookel owns the property on which B & J conducts its warehouse business as discussed in more detail herein.

A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall compute demurrage charges, and establish rules related to those charges, in a way that fulfills the national needs related to—

(1) freight car use and distribution; and

(2) maintenance of an adequate supply of freight cars to be available for transportation of property.

In 49 C.F.R. § 1333.1, the STB defines demurrage as “a charge that both compensates rail carriers for the expenses incurred when rail cars are detained beyond a specified period of time (i.e., free time) for loading or unloading, and serves as a penalty for undue car detention to encourage the efficient use of rail cars in the rail network.” “Demurrage shall be assessed by **the serving rail carrier, i.e., the rail carrier providing rail cars to a shipper at an origin point or delivering them to a receiver at an end-point or intermediate destination.** A serving carrier and its customers (including those to which it delivers rail cars at origin or destination) may enter into contracts pertaining to demurrage, but in the absence of such contracts, demurrage will be governed by the demurrage tariff of the **serving carrier.**” 49 C.F.R. § 1333.2 (emphasis added).

The STB issued a new rule in 2014 to clarify demurrage liability in circumstances where warehousemen (or other third-party intermediaries who handle the goods but have no property interest in them) are charged demurrage despite having no contractual relationship with the railroad seeking payment. *Demurrage Liability*, EP 707 (STB served Apr. 11, 2014). “**Any person receiving rail cars from a rail carrier for loading or unloading** who detains the cars beyond the period of free time set forth in the governing demurrage tariff may be held liable for demurrage **if the carrier has provided that person with actual notice of the demurrage tariff providing for such liability prior to the placement of the rail cars.** The notice required by this section shall be in written or electronic form.” 49 C.F.R. § 1333.3 (emphasis added). In this situation, the STB

notice requirement applies to the Keystone warehousemen, like B & J, who are not parties to the original rail shipping contracts involving CSX or NS.

To be sure that these third parties know what their liability will be, the STB emphasized that, for demurrage purposes, constructive notice of the demurrage tariff is inadequate. Black's Law Dictionary defines "actual notice" as "notice given directly to, or received personally by, a party." By contrast, Black's Law Dictionary defines "notice" more generally, stating that a person has notice of a fact or condition if that person has actual knowledge of it, has received information about it, has reason to know about it, or is considered as having been able to ascertain it by checking an official filing or recording. In other words, the term "notice" itself does not make clear that rail carriers must provide notice of their demurrage tariffs directly to receivers. For this reason, the Board used the term "actual notice," as it more accurately conveys the requirements of the rule. *Demurrage Liability*, EP 707, slip op. at 18. As such, actual notice of the possibility of liability under a demurrage tariff to warehousemen is a crucial aspect of this rule.

2. The Rail Situation at Issue Here.

In March 1951, the United States Steel Company ("US Steel") broke ground on a 3,800-acre site at Morrisville, Pa., and began construction of its Fairless Works, consisting of a large integrated steel mill and a plant of the National Tube Division, a pipe making facility of US Steel. At this time, Morrisville, Pa, was located on the main line of the Pennsylvania Railroad between Philadelphia and New York. Around the same time, in order to serve the Fairless Works, the Pennsylvania Railroad constructed a rail line, the Fairless Spur, 2.7 miles in length, from Morrisville Yard connecting with the extensive Fairless Works Trackage. The site involves miles of track originally built to serve this massive facility. Reading Company and Pennsylvania

Railroad trains operated into and out of the Fairless Works over the Fairless Spur under the terms of an agreement between these two railroads dated October 24, 1951.²

Under the Regional Rail Reorganization Act of 1973, Conrail acquired the rights to access Fairless Works over the Fairless Spur from the Pennsylvania Railroad upon its bankruptcy. Presently, Conrail is a jointly owned subsidiary, with CSX and NS, each owning respectively 42% and 58% of its stock, corresponding to how much of Conrail's assets they acquired in 1998. *See CSX Corp. et al.—Control—Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (Merger Dec. No. 89). Each parent, however, has an equal voting interest. The primary assets retained by Conrail are ownership of the three Shared Assets Areas in New Jersey, Philadelphia (the rail territory at issue here), and Detroit. Both CSX and NS have the right to serve all shippers in these areas, paying Conrail for the cost of maintaining and improving trackage. *Id.* at 228.

3. Present Rail Service at Keystone.

NorthPoint Development (“NorthPoint”) purchased the massive Fairless Works facility in 2020 that was owned by US Steel.³ Declaration of Joe Fleischman (“Decl.”) at ¶ 2. NorthPoint has been developing the property into a large industrial park now called Keystone Trade Center (“Keystone”) resulting in many rail shippers as well as warehousemen being served on the premises by Conrail. *Id.*⁴ In general, Conrail operates to and from Morrisville Yard over the 2.7-

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https://www.google.com/books/edition/Awards_Third_Division_National_Railroad/2t5ZAAAAYAAJ?hl=en&gbpv=1&dq=fairless+spur&pg=PA476&printsec=frontcover at 476-77;

https://www.google.com/books/edition/Railway_Age/IfElAAAAMAAJ?hl=en&gbpv=1&dq=fairless+spur&pg=RA11-PA108&printsec=frontcover at 108.

³ <https://levittownnow.com/2020/12/29/large-u-s-steel-site-in-falls-tw-p-sold-for-160-million/>

⁴ <https://www.keystone-trade.com/>

mile Fairless Spur to and throughout the Fairless Works Trackage. *Id.* at ¶ 3. CSX Statement of Facts (“SOF”) at ¶¶ 8, 11, attached hereto as Exhibit A.

These warehousemen at Keystone have customers who send freight to them via rail by loading rail cars and then transmitting bills of lading that instruct rail carriers, including CSX and NS, to deliver the rail cars to the warehousemen at Keystone. *Id.* Once the shipper, at the rail car’s origin, tenders the rail car to CSX or NS for delivery to the warehousemen, these railroads deliver the cars to the Morrisville Yard. *Id.*: SOF at ¶¶6-9. Conrail owns and operates the classification yard there with the remainder operated by New Jersey Transit, a commuter authority. CSX or NS will then electronically notify B & J that the rail car is available for placement at its facility by Conrail. *Id.* at ¶ 3. SOF at ¶ 16. However, after the railcars are delivered to Morrisville Yard, Conrail does automatically move the cars to the nearby Fairless Yard, via Fairless Spur (also owned by Conrail) to alleviate congestion within the Morrisville Yard. *Id.* at ¶ 3; SOF at ¶¶ 8, 11. *See* Jonathan Broder Decl., at ¶¶9, 10, attached hereto as Exhibit B at p. 24. Upon arrival at Fairless Yard, Conrail operates and has exclusive rights to use a portion of Fairless Yard subject to an operating agreement formerly with US Steel which NorthPoint assumed upon its purchase of Fairless Works from US Steel. Decl. at ¶ 3. B&J orders all of the rail cars by calling or emailing Conrail. SOF at ¶ 17. After Conrail receives the order to deliver a rail car to B&J, Conrail will place the rail car at B&J’s siding. Broder Decl. at ¶ 17. The cars are then delivered by Conrail to the appropriate warehouseman at Keystone, like B & J. Decl. at ¶ 3. B&J is served from one of the two rail serving yards, i.e., the Morrisville Yard and the Fairless Yard (the “Rail Serving Yards” as called by CSX and Conrail.) Broder Decl. at ¶ 9. In other words, the warehousemen at Keystone are directly served only by Conrail. *Id.* at ¶ 5; SOF at ¶ 5.

4. Demurrage Charges by CSX/NS for Private Cars in Conrail Yard.

On September 18, 2007, Yookel purchased property within Keystone from US Steel. Decl. at ¶ 4. See “Real Estate Agreement”, attached to Decl. as Decl. Exhibit A. Pursuant to the Real Estate Agreement, Yookel obtained “ancillary rights” that included “irrevocable, non-exclusive rights for rail access[] and railroad staging” on the common area rails. *Id.*; Real Estate Agreement § 1.01.

As part of the real estate transaction, US Steel also granted Yookel an easement over a small area surrounding Yookel's property. *Id.* at ¶ 5. See “Rail Easement”, attached to Decl. as Decl. Exhibit B. The easement disclosed that the rail system at Keystone was maintained and operated for [US Steel] through an operating agreement with Conrail. *Id.*; Rail Easement at 3. Specifically, US Steel's predecessor in interest - USX Corporation - entered into a “Rail Operating Service Agreement” with Conrail that became effective on January 1, 2000. *Id.* See Rail Operating Service Agreement, attached to Decl. as Exhibit C. Pursuant to the Rail Operating Service Agreement, Conrail acquired “the right to operate [Fairless Yard]” and was **“solely responsible for negotiating suitable commercial arrangements . . . with Shippers for line-haul, terminal [,] and accessorial freight charges . . .”** *Id.*; Rail Operating Service Agreement §§ 3, 10 (emphasis added). The Rail Operating Service Agreement remains in effect with NorthPoint as noted. *Id.*

In October 2014, Yookel leased its property at Keystone to B & J. Decl. at ¶ 6. As part of their negotiations, Yookel represented to B & J that B & J was entitled to use the common area rails pursuant to the ancillary rights. *Id.* After B&J started using the common area rails in October

2014, however, Conrail's parent companies – CSX and NS - sent invoices to B & J for demurrage fees. *Id.* CSX and NS continue to send invoices for demurrage fees to B & J to this date. *Id.*⁵

With respect to the demurrage charges at issue here, CSX is an interstate rail carrier that has published tariff CSXT 8100, which incorporated tariff 4049, pertaining, in part, to the accrual and assessment of demurrage charges. *Id.* at ¶ 7. See CSX Tariff attached to hereto as Exhibit C. NS also is an interstate rail carrier that has published tariff NS 6004-D pertaining to the accrual and assessment of demurrage charges (the “Tariffs” including CSX and NS). See NS Tariff attached hereto as Exhibit D. Pursuant to the Tariffs, CSX and NS charge demurrage to warehousemen, like B&J, located at Keystone even though they have no contractual relationship with the rail carrier and Conrail directly serves them. Decl. at ¶ 7. CSX and NS assumedly will claim that these demurrage charges are appropriate under 49 C.F.R. § 1333.3, as they have provided notice of the Tariffs to the Keystone warehousemen like B & J. *Id.*: CSX Notice of Demurrage Tariff attached hereto as B&J Exh. E. However, Conrail was not mentioned in this

⁵ Yookel and B&J have been involved in litigation over demurrage at this location in the past. See *CSX Transportation, Inc. v. B & J Group, Inc.*, 381 F.Supp.3d 438 (E.D. Pa. 2019); *Yookel, Inc. v. United States Steel Corp.*, 2022 WL 542379 (E.D.N.Y., Feb. 23, 2022) *aff'd* by 2023 WL 3033512 (2nd Cir. Apr. 21, 2023). However, this Petition addresses separate issues about adequate notice by a carrier under § 1333.3 and seeks clarification of the rule established in *Demurrage Liability*. It also requires the Board to determine the nature of track and common carrier status regarding Conrail’s operations in and around Keystone. *Petition for Dec. Order Florida East Coast R.R. Co.*, 360 ICC 272, 276 (1979) (“As the body charged with the administration of the Interstate Commerce Act, we do not find the State court’s decision a final and binding adjudication of the character of either the track or P&O Dock.”). The Board is “uniquely qualified” to interpret its own rule. See, e.g., *Cal. High-Speed Rail Auth.—Pet. for Dec. Order*, FD 35861 (STB served Dec. 12, 2014). Moreover, this Petition relates to later claims for demurrage than those addressed in the court cases cited above. *General American Transp. Corp. v. Indiana Harbor*, 3 I.C.C.2d 599, 617 (1987) (“that ‘a classification of imports is *res judicata* only with respect to the same merchandise, not with respect to later identical merchandise, even if the questions of law and fact are the same,’ citing *U.S. v. Stone & Downer Co.*, 274 U.S. 225 (1927).” In addition, NS and Conrail were not parties in any of the prior litigation.

notice from CSX. Also, Conrail has not provided notice of the Tariffs or any demurrage tariff to the warehousemen at Keystone. *Id.*⁶

5. Conrail Is a Common Carrier.

In 1998, the STB approved the acquisition of Conrail by CSX and NS. *CSX Corp. et al.—Control—Conrail Inc. et al.*, 3 S.T.B. 196. In pertinent part, the decision stated:

Shared Assets Areas [SAAs”] and Operating Agreements. Both [CSX and Norfolk] will be permitted to serve shipper facilities located within the three SAAs (the North Jersey SAA, the South Jersey/Philadelphia SAA, and the Detroit SAA), which will be owned, operated, and maintained by Conrail for the exclusive benefit of [CSX and Norfolk]. [CSX and Norfolk] will enter into an SAA Operating Agreement with [Conrail] in connection with each of the SAAs, and [Conrail] will grant to [CSX and Norfolk] the right to operate their respective trains, with their own crews and equipment and at their own expense, over any tracks included in the SAAs. [CSX and Norfolk] will each have exclusive and independent authority to establish all rates, charges, service terms, routes, and divisions, and to collect all freight revenues, relating to freight traffic transported for its account within the SAAs. Other carriers that previously had access to points within the SAAs will continue to have the same access as before.

Id. at 228.

Under the SAA Operating Agreement, Conrail has the responsibility to “control the dispatching, scheduling and movement of, and Switching and Yard Services for, all trains” but “shall not participate or appear in any rates, routes or divisions relating to any freight traffic whatsoever to, from and within the [SAA], and shall not be entitled to or responsible for any freight charges relating to such freight traffic.” *CSX Transportation, Inc.*, 381 F. Supp. 3d at 441 (citations omitted). Conrail “shall not quote or establish any rate or service terms applicable to freight transportation services ... enter into transportation contracts ... or undertake to perform any for-hire transportation services directly.” *Id.*

⁶ As a parent company, CSX or NS controls Conrail’s demurrage policy. As such, Conrail’s demurrage is also subject to the Tariffs.

Importantly, here, Conrail is definitively a common carrier under federal law. This status is established by explicit statutory designation in 45 U.S.C. § 741(b), stating that "The Corporation shall be deemed a rail carrier subject to part A of subtitle IV of Title 49." The courts and the Board have found Conrail to be a common carrier subject to the jurisdiction of the STB after the merger. *See Consolidated Rail Corp. v. Canada Malting Co., Ltd*, 1999 WL 549029 (E.D. Pa. 1999); *Consol. Rail Corp.—Aban. Exemption—in Schuylkill & Carbon Cntys., Pa.*, AB 167 (Sub-No. 1195X) (STB served Dec. 2, 2021). Also, Conrail remains a separate entity from NS and CSX. *See In Re Paulsboro Derailment Cases*, Lead Case No. 13-784, 2015 WL 4914397, *6-7 (D.N.J. Aug. 18, 2015). At Keystone, the warehousemen receiving railcars only see Conrail at their facilities. And generally, as noted, except the Fairless Works Trackage (owned by NorthPoint), the trackage at issue, including Morrisville Yard and the Fairless Spur, is operated and controlled by Conrail.

Moreover, Conrail's operations here clearly have all the characteristics of a regulated rail line.⁷ It extends into new territory to serve locations by running from the Morrisville Yard over the Fairless Spur and throughout the Fairless Works Trackage. Obviously, these operations use

⁷ In demonstrating whether track is spur, industrial, switching or team track exempt from STB jurisdiction under 49 U.S.C. § 10906, the Board considers the length of the track; whether it serves more than one shipper; whether it is stub ended; whether it was built to invade the territory of another railroad; whether the shipper is located at the end of the track; whether there is regularly scheduled service; the volume of traffic moving over the track; who owns and maintains the track; whether the track was constructed with light weight rail; the condition of the track; what the track is used for (e.g., loading, unloading, switching); and whether there are stations on the track. *Battaglia Distrib. Co. v. Burlington N.R.R.*, Finance Docket No. 32058 (STB served June 27, 1997). In *Nicholson v. ICC*, 711 F.2d 364, 367 (D.C. Cir. 1983), *cert. denied*, 464 U.S. 1054 (1984), the court noted that the designation of a length of track as a spur rather than a line of railroad depends on the "use of the track segment." *See also Chelsea Prop. Owners--Abandonment--Portion of the Consolidated Rail Corp's West 30th Street Secondary Track in New York, N.Y.*, 8 I.C.C.2d 773, 790, *aff'd on other grounds sub nom. Consolidated Rail Corp. v. ICC*, 29 F.3d 706 (D.C. Cir. 1994). There is no single test for what constitutes a spur. Rather, the STB has adopted a case-by-case approach for such cases, relying on the track's use, history and physical characteristics. Although this track, the Fairless Spur and Fairless Works Trackage do not appear to have initially been built as regulated track, the transformation of Keystone from a one shipper plant owned by US Steel into the largest industrial park on the east coast certainly changes the nature of this track to regulated main line.

standard gauge track. They serve a wide variety of shippers and warehousemen throughout Keystone. And while Conrail apparently does not hold itself out to provide common carrier service as discussed in the Conrail merger decision, it agreed to be “solely responsible for negotiating suitable commercial arrangements . . . with Shippers for line-haul, terminal[,] and accessorial freight charges” in Rail Operating Service Agreement. Interestingly, this arrangement was entered into after the merger. Therefore, based on this situation, Conrail is the serving railroad to the warehousemen in Keystone.

6. The Demurrage Charges Here Are Improper as Conrail/CSX/NS Did Not Provide Proper Notice in Accordance with 49 C.F.R. § 1333.3.

As noted, any person receiving rail cars from a rail carrier for loading or unloading who detains the cars beyond the period of free time set forth in the governing demurrage tariff may be liable for demurrage if the serving carrier has provided that person with actual notice of the demurrage tariff under 49 C.F.R. § 1333.3. In this situation, the warehousemen only receive rail cars from Conrail for loading or unloading, not CSXT or NS. Conrail provides this “last mile” service over at least five miles of track from Morrisville Yard and is part of the common carrier service provided by CSX and NS to Keystone.⁸ As noted, the generic notices from CSX and NS make no mention of Conrail. *See* B & J Exh. E. And as described earlier, Conrail takes the cars from CSX or NS at the Morrisville Yard, controlled and operated by Conrail, over the 2.7-mile Fairless Spur to the Keystone warehousemen on the extensive Fairless Works Trackage. Again, these warehousemen only see Conrail at their facilities and have no contractual relationship with CSX or NS.

⁸ NS and CSX apparently participate in a standard railroad industry arrangement under which NSR or CSX and Conrail hold themselves out jointly to provide to the public a common carrier rail service to Keystone with Conrail operating as a common carrier railroad under this arrangement by serving as CSX’s or NSR’s agent for its service to Keystone. *See, e.g., Honey Creek Railroad – Petition for Dec. Order, et al*, FD 34869, slip op. at 8 (STB served June 4, 2008).

Therefore, these warehousemen have no reason to believe that they owe these two large railroads for demurrage based on these day-to-day rail operations in and around Keystone. Moreover, the notices by these two railroads provide no explanation why demurrage should be paid to them as opposed to Conrail or at all. This belief is further fortified by B & J's recurring, escalating payments to NorthPoint for maintenance and use of the railway within Keystone and the Rail Operating Service Agreement. Decl. at ¶ 11. As noted, this Agreement, entered into after the Conrail merger, provides that Conrail acquired "the right to operate [Fairless Yard]" and was "solely responsible for negotiating suitable commercial arrangements . . . with Shippers for line-haul, terminal [,] and accessorial freight charges" Rail Operating Service Agreement §§ 3, 10.⁹ In addition, the Sidetrack Agreement requires B&J to pay a fee to Conrail for maintenance.

In other words, if CSX or NS directly delivered the cars to the Keystone warehousemen, there would be no question that their actual notice of the Tariffs would be sufficient to satisfy § 1333.3. However, that is not the case, and their § 1333.3 notices do not adequately put the warehousemen at Keystone on notice as to their possible liability for demurrage.

The twist in this situation is how to handle demurrage charges to Keystone warehousemen that only receive the railcars from Conrail at their facilities. This situation is further complicated by the ownership of Conrail by CSX and NS and the use of their demurrage tariffs by Conrail. Assumedly, CSX and NS will argue that receipt of notice by the warehousemen from these railroads at Keystone also should apply to Conrail who serves as an agent for these two carriers pursuant to the Shared Assets Agreement.

⁹ Pursuant to its Rail Service Operating Agreement as noted, Conrail is required to maintain and operate on all of this trackage to serve the numerous warehousemen and shippers located on the miles of track in Keystone. Moreover, these tracks are used to carry trains between points of shipment and delivery by Conrail. Conrail particularly uses these lines to move cars at Keystone, by serving the shippers and warehousemen that are located on this track.

While technically Conrail does act as an agent for NS and CSX as noted in the merger decision in FD No. 33388 and Shared Assets Agreement, it is still a well-known, separate railroad from these two larger railroads, and a warehouseman cannot reasonably be expected to understand the complicated relationship between these three distinct railroads based on a complex merger approved in the 1990s. The purpose of § 1333.3 is to provide “actual notice” to a warehouseman, so it is made sufficiently aware of its responsibilities to these railroads with whom it has no contractual relationship. Here, the notice from NS or CSX when Conrail is the railroad serving them is clearly inadequate and defeats the purpose of the rule which is to make these warehousemen aware of their possible demurrage liability.

Based on these circumstances, it is clear that Conrail should be providing § 1333.3 notice to these warehousemen as it is indisputably the railroad delivering the railcars for unloading to B & J and is clearly the serving railroad. Even if the Board determines that NS or CSX is the appropriate railroad to provide notice of the demurrage tariff, this notice should make the warehousemen aware of the relationship with Conrail to provide them with sufficient information to understand the complex interplay between these different railroads. Otherwise, warehousemen cannot be considered actually notified in accordance with § 1333.3.

Consequently, until proper notice is given, any demurrage charges to the warehousemen at Keystone are improper whether under the Tariffs or otherwise, as the notice provided to date is clearly inadequate.

7. Moreover, Even If Notice Is Considered Adequate, Demurrage Charges by CSX or NS for Private Cars on Private Track Are Improper.

As noted, after the private railcars are delivered to Fairless Yard, Conrail moves the railcars throughout Keystone to the various warehouse and shipper facilities. Conrail operates Fairless Yard and has rights to use a portion of Fairless Yard owned by NorthPoint subject to the Rail

Service Operating Agreement. *See* Exhibit B at p. 5. Because the private rail cars are stored on private property at the Fairless Yard owned by Northpoint, any demurrage charges for storage in this area by CSX, NS, or Conrail are improper.

It is clear that “demurrage charges may not be assessed when private cars are held on private track, because the railroad is not being deprived of any of its assets.” *R.R. Salvage & Restoration, Inc.* NOR 42102 et al., slip op. at 7 (STB served July 19, 2010); *Indiana Harbor Belt R. Co. v. Jacob Stern & Sons*, 37 F. Supp. 690, 692 (N.D. Ill. 1941) (“The decisions of the Commission from the beginning recognize the right of a car owner to hold a car on his own track without becoming liable for demurrage.”); *Demurrage Liability*, 79 FR 21407-01, at *21409 (“[W]e clarify here that [rail cars] encompasses both railroad-owned cars and privately owned cars when such privately owned cars are held on railroad property . . . because [demurrage] charges ‘compensate the railroad for use of its assets (i.e., the space on its track or at its yards), and they encourage more efficient use of freight cars on its system.’”) (internal citations omitted). This fits with CSX’s tariff that provides “Private Car Storage fees are applied to Private Cars waiting on a *railroad’s tracks*...” *See* CSX Tariff at §2.

As noted, the rail operations at Keystone are subject to the Rail Operating Service Agreement. The entire rail infrastructure at Keystone is owned by NorthPoint. Pursuant to this Rail Operating Service Agreement, Conrail has “the right to operate the Industrial Park Track and the Joint Use Track, for the term and upon the conditions set forth in this Agreement.” At ¶ 5. CSX or NS is not a party to the Rail Operating Service Agreement, nor is it named as a third-party beneficiary of the agreement. In fact, the Rail Operating Service Agreement specifically prohibits NorthPoint from engaging “any other third party to operate the Industrial Park Tracks and/or Joint

use Tracks.” *Id.* As the agreement makes clear, CSX and NS have no interest in the railway within Fairless Yard, and Conrail has the right to operate the NorthPoint-owned rails.

In addition, NorthPoint is required by agreement with the owners and tenants at Keystone to allow them to use the rails. Moreover, as noted, B & J pays reoccurring, escalating payments to NorthPoint for maintenance and use of the railway within Keystone. Decl. at ¶ 11. This invoice amount is applied towards the costs of Conrail’s movements within Keystone and for maintenance of its rail infrastructure. In other words, as a tenant of Keystone, B&J has the right to use the rail infrastructure and pays to maintain it. *Id.* Consequently, it is evident that any rail operation in Keystone takes place on private track owned by NorthPoint. Therefore, demurrage for any private cars on this private track is improper.

8. A Declaratory Order Is Proper Here.

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the STB has discretionary authority to issue a declaratory order to terminate controversy or remove uncertainty. The STB has exercised broad discretion in handling such requests, considering a number of factors, including significance to the industry and ripeness of the controversy. *Delegation of Authority-- Declaratory Order Proceedings*, 5 I.C.C.2d 675, 767 (1989). First, this controversy is ripe. CSX and NS have been improperly charging demurrage to warehousemen at Keystone and continue doing so today as explained herein. Moreover, this matter has great significance to the rail industry. Railroads have extensive knowledge about who is liable for demurrage charges under the STB regulations and their own tariffs. The Board has made a significant effort through its rulemaking in *Demurrage Liability* to adequately advise warehousemen of their responsibilities to pay demurrage to railroads under certain conditions. However, railroads should not be permitted to confuse the issue by failing

to provide adequate notice under § 1333.3 and claiming it has done so through a parent company that does not actually serve the warehousemen. This confusing situation is commonplace throughout the railroad industry, especially in the Shared Assets Areas, and raises numerous complex factual and legal questions as is evident from the situation here. In this matter, a warehouseman has to determine who is the serving carrier and can only “ascertain it by checking an official filing or recording.” *Demurrage Liability* at 18. B & J must dig through numerous contracts, STB decisions, and old rail files to come to a determination about the propriety of the demurrage charges. This complex, unwieldy situation is clearly not what the Board had in mind when issuing its new rules in 2014 in *Demurrage Liability* and places warehousemen in an unfair position. On the other hand, CSX or NS would simply have to add a few sentences onto its notice to explain why the warehousemen are liable for demurrage even when receiving their railcars from Conrail. Therefore, it would be helpful to all parties, including railroads, shippers, warehousemen, and switching carriers, to clarify when demurrage notice is adequate under these circumstances.

Similarly, railroads should not charge demurrage on private property where private cars are at issue. Any charges for demurrage under these circumstances are simply unfair and not what the STB or Congress had in mind with respect to demurrage.

Conclusion

For the foregoing reasons, the Board should issue the requested declaratory order.

Respectfully submitted,

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Dated: May 14, 2026

Certificate of Service

I certify that I have, on this 14th day of May, 2026, served by FedEx Overnight
copies of the foregoing document on the following parties:

Legal Department
Norfolk Southern Railway Company
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Atlanta, GA 30308

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330 Fellowship Road, Suite 300,
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Legal Department
CSX Transportation
500 Water Street
Jacksonville, FL 32202

/s/ Daniel R Elliott
Daniel R. Elliott

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No.

YOOKEL, INC. -
VERIFIED PETITION FOR DECLARATORY ORDER

DECLARATION OF JOE FLEISCHMAN

I, Joe Fleischman, have personal knowledge of the facts set forth in this declaration, and if I were called as a witness, I could and would testify competently to them.

1. I am the President at B&J Group, Inc. ("B&J"). I have worked at B&J since 2011. B&J has offices in Morrisville, PA, in the Keystone Trade Center ("Keystone"). B&J is a chemical outsourcing company that provides warehousing, distribution, packaging, and other related services from this location. Yookel, Inc. ("Yookel") is a real estate company.
2. NorthPoint Development ("NorthPoint") purchased the Fairless Works facility in Morrisville in 2020 that was owned by US Steel. NorthPoint is developing the property into an industrial park now called Keystone. Numerous warehousemen, including B & J, and other types of rail shippers are located at Keystone, which is directly served by Conrail on the Keystone property.
3. These warehousemen and companies at Keystone have customers and suppliers who send freight to them via rail by loading rail cars and then transmitting bills of lading that instruct rail carriers, including CSX and Norfolk Southern Railway ("NS"), to deliver the

rail cars to the warehousemen at Keystone. Once the shipper, at the rail car's origin, tenders the rail car to CSX or NS for delivery to the warehousemen, CSX or NS delivers the cars to the Morrisville Yard. CSX or NS will then electronically notify B & J that the rail car is available for placement at its facility by Conrail. However, after the railcars are delivered to the Morrisville Yard, Conrail does automatically move the cars to Fairless Yard (in Keystone) to alleviate congestion within the Morrisville Yard. Upon arrival at Fairless Yard, Conrail operates Fairless Yard and has rights to use a portion of Fairless Yard subject to an operating agreement formerly with US Steel which NorthPoint assumed upon its purchase of Fairless Works from US Steel. The cars are then delivered to the appropriate warehouseman at Keystone, like B & J. In other words, the warehousemen at Keystone are directly served at destination and origin only by Conrail. Conrail will not place the rail cars directly at B & J's facility because it is a "closed gate" facility meaning that rail cars destined to B & J are held until it orders the cars to be placed at its facility.

4. On September 18, 2007, Yookel purchased property within Keystone from US Steel. ("Real Estate Agreement" attached hereto as Exhibit A). Pursuant to the Real Estate Agreement, Yookel obtained "ancillary rights" that included "irrevocable, non-exclusive rights for rail access[] and railroad staging" on the common area rails. (Exh. A at § 1.01 (depicting Yookel's ancillary rights)).
5. As part of the real estate transaction, US Steel also granted Yookel an easement over a small area surrounding Yookel's property. ("Rail Easement"). (See Exh. B (depicting easement area)). The Rail Easement disclosed that the rail system at Keystone was maintained and operated for [US Steel] through an operating agreement with Conrail. (Id.

at 3.) Specifically, US Steel's predecessor in interest - USX Corporation - entered into a Rail Operating Service Agreement with Conrail that became effective on January 1, 2000. ("Rail Operating Service Agreement" attached hereto as Exhibit C). Pursuant to the Rail Operating Service Agreement, Conrail acquired "the right to operate [Fairless Yard]" and was "solely responsible for negotiating suitable commercial arrangements . . . with Shippers for line-haul, terminal[,] and accessorial freight charges" (Id. at §§ 3, 10.) The Rail Operating Service Agreement remains in effect with NorthPoint.

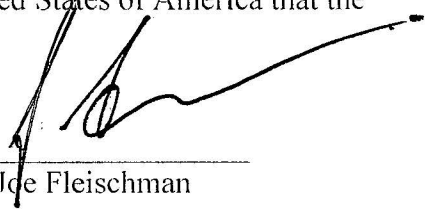
6. In October 2014, Yookel leased its property at Keystone to B&J. As part of their negotiations, Yookel represented to B&J that B&J was entitled to use the common area rails pursuant to the ancillary rights in the Real Estate Agreement. After B&J started using the common area rails in October 2014, however, Conrail's parent companies – CSX and NS - sent invoices to B&J for demurrage fees. CSX and NS continue to send invoices for demurrage fees to B&J to this date.
7. With respect to the demurrage charges at issue here, CSX is an interstate rail carrier that has published tariff CSXT 8100, which incorporated tariff 4049, pertaining, in part, to the accrual and assessment of demurrage charges. NS also is an interstate rail carrier that has published tariff NS 6004-D pertaining to the accrual and assessment of demurrage charges. Pursuant to the Tariffs, CSX and NS charge demurrage to B&J at Keystone even though it has no contractual relationship with either rail carrier and Conrail directly serves them. Conrail has not provided notice of the Tariffs or any demurrage tariff to the warehousemen at Keystone.
8. These rail operations performed by Conrail at Keystone are controlled by the Rail Operating Service Agreement between NorthPoint and Conrail as noted. (See Exh. C).

This document “retain[s] Conrail as a rail operator to provide rail switching service to present and future shippers in the Fairless Industrial Park.” (Id. at p. 1). Pursuant to the Rail Operating Services Agreement, “Conrail shall have the right to be the operator of the Industrial Park Tracks for the benefit of all present and future Shippers.” (Id. at p. 4, Sec. 5). Pursuant to the Rail Operating Service Agreement, NorthPoint cannot “engage any other third party to operate the Industrial Park Tracks.” (Id.) CSX and NS are not party to the Rail Operating Service Agreement, nor are they named as a third-party beneficiary of the agreement. (Id.) As the agreement makes clear, CSX and NS have no interest in the railway within Fairless Yard, and Conrail alone has the right to operate the NorthPoint-owned rails.

9. Conrail offers its own rail services to customers directly. (See Sidetrack Agreement attached hereto as Exhibit D.) Specifically, Conrail has direct contracts with customers of Keystone like B&J.
10. Only Conrail directly serves the Keystone warehousemen there. However, to the best of my knowledge, only CSX provided notice of the Tariffs to the warehousemen. Conrail never provided notice to the warehousemen of a demurrage tariff or possible demurrage liability for its service at Keystone.
11. Moreover, B&J pays reoccurring, escalating payments to NorthPoint for maintenance and use of the rail tracks within Keystone which are all owned by NorthPoint as private track. This invoice amount is applied towards the costs of maintenance of the rail infrastructure. (Exh. B at 1(D)(c)). In other words, as a tenant of Keystone, B&J has the right to use the rail infrastructure and pays to maintain it.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: April 14, 2026



Joe Fleischman

Declaration Exhibit A

AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE

THIS AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE (hereinafter "Agreement") is made and effective the 19TH day of September 2007, (Contract Date) by and between United States Steel Corporation, a Delaware corporation, with a principal office and place of business located at 600 Grant Street, Pittsburgh, Pennsylvania 15219-2800 (hereinafter "Seller"), and Samax Enterprises Inc. a New York corporation and Yookel Inc. a New York corporation, located at 29 Riverside Avenue, Building 2, Newark, NJ 07104-4237 (hereinafter "Buyer").

WITNESSETH:

In consideration of all the covenants, terms, and conditions herein contained and intending to be legally bound, Seller and Buyer hereby agree as follows:

1. **Premises.** Seller agrees to sell and Buyer agrees to buy that certain real estate described as 1001 New Ford Mill Road in Morrisville, PA 19067, commonly known as The National Can Building, comprised of an approximately 177,000 square foot building on approximately 14.1 Acres, and as more specifically described on Exhibit "A" attached hereto and incorporated herein; TOGETHER with all appurtenances, easements, hereditaments, and access rights pertaining to the property, and all other rights of Seller in and to the property (hereinafter "Premises"). Any excess or deficiency in the stated acreage shall not affect the remaining terms and conditions of this Agreement.

1.01 **Ancillary Rights.** As part of the sale and subject to the terms hereof, Buyer shall have irrevocable, non-exclusive rights for rail access, and railroad staging as set forth and designated as the Rail Rights, attached hereto as Exhibit K (such rights are referred to herein as the "Ancillary Rights"; the Ancillary Rights do not include the Buyer's Track); provided, however, the Buyer shall utilize the switching carrier designated, by Seller and agree that railcar storage, by Buyer, shall be limited only to the Premises. In the event the switching carrier designated by Seller is not available to serve the Premises, Buyer may make alternate arrangements for switching service, subject to Seller's approval, which approval shall not be unreasonably withheld or delayed. In addition, Buyer will take ownership of a rail easement as depicted on Exhibit K1 and in the event Buyer becomes the sole user of any common area track leading to their property, Buyer will be responsible for maintenance of that portion of the track located west of Steel Road and Seller will grant rights to use such track.

(A) Seller reserves the right, at Seller's sole cost and expense, and upon notice to Buyer to locate, move, substitute for or otherwise change the location of any of the Ancillary Rights to such locations within the KIPC as may be designated by Seller, provided that the location of Buyer's new

Ancillary Rights provides Buyer with Ancillary Rights equivalent to the original Ancillary Rights, and the Seller shall use its best efforts to minimize disruption to Buyer's business operations at the Premises. Upon any such designation of a new location and upon completion of such relocation, and upon granting of such replacement Ancillary Rights, all rights, title and interest created by this sale in and to the old location of the Ancillary Rights shall automatically terminate and revert to Seller without demand or reentry by Seller. Any such new location for any of the Ancillary Rights shall likewise be subject to all the terms and provisions of this sale including the provisions of section 1.0.1. Buyer's rights hereunder are subject to rights of other owners, tenants and occupants at the KIPC, and to Seller's rights and Seller's agents, assignees, carriers, contractors and all other persons lawfully using the Ancillary Rights, herein called "rightful user".

(B) Buyer agrees to pay \$500 per acre, per annum for Rail Service Maintenance (hereinafter "Maintenance Fee"). The Maintenance Fee will be used by Seller to maintain the Common Area Rail Lines that service the Premises. The Maintenance Fee will escalate by 3% per year and be billed on the first day of every year. The first year's maintenance fee will be prorated based on the closing date. In the event Buyers or any future grantees, lessees, or successors in interest, no longer make use of the rail service they shall have the option of discontinuing same. In the event the Buyer or any future lessees or successors in interest discontinue payment of the Maintenance Fee, all Ancillary Rights in section 1.01 are terminated, along with and Seller's obligations under this section.

1.02 Utilities.

(A) Seller and Buyer shall enter into an appropriate Utility and Services Agreement at the execution of this Agreement, which shall be in substantially the form of Exhibit D. Buyer, at its expense, shall provide for all connections and related services that are needed according to the Utility and Services Agreement.

(B) Except for utilities provided by the above agreement, Buyer shall be responsible for either obtaining all of the utilities from third party suppliers and paying all charges for such utilities or for providing such services itself, at its own cost. In no event shall Landlord be responsible for any interruption or failure in the supply of any utilities.

(C) Seller is hereby granted a blanket easement for access to and for maintenance of existing utilities as shown on Exhibit A and more particularly described in Exhibit G. Seller shall have all rights of access to the existing infrastructure on the Premises, which shall remain the Sellers property. Seller shall attempt to provide reasonable notice (minimum 3 business days) to Buyer of all scheduled and planned maintenance of the utilities and the property shall be returned as close as possible to its original condition. The notice provision shall be waived in the event of an emergency or an event believed to be an emergency.

(D) Buyer, as a condition of the sale of the Premises, is required to disconnect from Seller's water service and connect to public water service within 24 months after the closing date of the Premises.

2. **Purchase Price.**

(A) Buyer agrees to pay for the Premises the sum of Six Million and Three Hundred and Ninety Thousand and 00/100 Dollars (\$6,390,000.00) (hereinafter "Purchase Price"), payable as follows: the amount of Three Hundred Thousand and 00/100 Dollars (\$300,000.00) as a down payment (hereinafter "Deposit") at the execution of this Agreement, and the balance amount of Six Million and Ninety Thousand and 00/100 Dollars (\$6,090,000 00) due at Closing, plus all Closing Costs outlined in Section 6 (hereinafter "Balance Due").

(B) **Method of Payment.** All payments shall be made in immediately available funds.

(i) Any sum payable to Seller hereunder that is less than One Hundred Thousand and No/100 Dollars (\$100,000.00) shall be paid either by certified or cashier's check made payable to "United States Steel Corporation".

(ii) Any amount payable to Seller of One Hundred Thousand and No/100 Dollars (\$100,000.00) or more shall be wire transferred, federal funds good same day, and the issuing bank shall be instructed by Buyer to transfer the funds as follows to: PNC Bank, Pittsburgh, PA, ABA #043000096, for Credit to United States Steel Corporation, General Deposit Account # 1-093130; except, however, if the parties hereto agree to Section 2(B)(iii) or 2(B)(iv) as follows:

(iii) Within five days of the Contract Date, Buyer shall pay an amount equal to Three Hundred Thousand and 00/100 Dollars (\$300,000.00), by wire transfer, federal funds good same day, to the following bank account (the "Escrow Agent's Bank Account") of Edward F. Murphy, Esquire (the "Escrow Agent"), to be held in escrow pursuant to the terms of an escrow agreement attached hereto as Exhibit "F" (the "Escrow Agreement");

Bank: Sovereign Bank
3 Terry Drive, Suite 100
Newtown, PA 18940

ABA Number:
Contact at Bank:

Account Name: Edward F. Murphy
Master Account Number:
Account to be credited:

- (iv) In the event that Buyer delivers a Termination Notice (as defined in Article 6(G)) before 5:00 pm EST on the 90th day after the Contract Date (such date, as it may be extended pursuant to Article 6(A) below being hereinafter called the "Due Diligence Deadline"), the Title Company is hereby directed to pay by wire transfer, funds good same day, the Escrowed Deposit (hereinafter defined) paid by Buyer to the following bank account of Buyer ("Buyer's Bank Account") as follows:

Bank: _____

Address _____

- (v) **Tax-Deferred Exchange.** Buyer agrees, at Seller's request, to cooperate with Seller in effecting for the benefit of Seller a simultaneous or delayed like-kind exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, and similar provisions of applicable state law (hereinafter "Section 1031 exchange"). Buyer agrees to execute such additional documents which are reasonably requested by Seller and which are reasonably necessary or desirable to affect such Section 1031 exchange for the benefit of Seller, including without limitation documents assigning this Agreement to a third party, exchange agreements, and exchange escrow instructions. Buyer acknowledges and agrees that, in connection with such a Section 1031 exchange, Buyer may be required by Seller to acquire title to the Premises from a party or parties other than the Seller and to pay the Purchase Price to such third party or parties. Any and all representations made by Seller to Buyer in connection with this Agreement shall remain in full force and effect and continue to inure to the benefit of Buyer, notwithstanding the assignment of this Agreement to a third party in connection with such Section 1031 exchange. Buyer's obligation to cooperate in a Section 1031 exchange is conditioned upon each of the following: (a) Buyer shall incur no additional costs, expenses, or liabilities as a result of, or in connection with, such Section 1031 exchange, and ***Seller shall indemnify and hold Buyer harmless*** from any liability incurred by Buyer in connection with such Section 1031 exchange; (b) the Closing for the Premises shall not be delayed as a result of such Section 1031 exchange, but shall occur within the time period contemplated by this Agreement; and (c) all acknowledgments, releases, representations, and warranties made by Seller (as set forth in this Agreement) shall remain in full force and effect in favor of Buyer until the delivery of the Deed, as if no exchange had occurred. This Section shall constitute notice to Buyer within the meaning of Treasury Regulation § 1.1031(k)-1(g)(4)(v). Any monies transferred under a Section 1031 Exchange shall be transferred to Bank: JPMorgan Chase Bank, N.A., New York, NY, ABA #: 021 000 021, Acct #: 507955013, Acct Name: J.P. Morgan Property Exchange Inc., United States Steel Corporation Account #200811.2.

- (vi) Seller likewise agrees to identically cooperate with Buyer in effectuating a 1031 exchange for the benefit of the Buyer.

Seller's Initials: _____

Buyer's Initials: _____

3. **Real Estate Taxes; Transfer Taxes; Recording Costs.**

All real estate taxes, including any special assessments, paid or payable in the year of Closing will be prorated by Seller and Buyer according to the number of days each party owns the Premises during the property tax year, fiscal or calendar, as the case may be, of the levying jurisdictions. Buyer and Seller shall split the payment of all real estate deed or transfer taxes, and each party shall pay one-half (1/2) thereof. Buyer shall pay all title guarantee or title insurance premiums (if any), all recording charges, and all other costs incurred at Closing (collectively hereinafter "Closing Costs"). Buyer shall retain and record the deed promptly following the Closing.

4. **Title Clearance.**

(A) Buyer shall obtain at its own cost and expense any survey, title commitments, title search, title opinion or title insurance policy which it deems necessary or which may be required, and Buyer shall notify Seller within twenty (20) days from receipt of the title commitment or the survey, of any defect or condition ("Objection") affecting marketability or insurability. Seller shall have thirty (30) days from the notice of such objection to cure the same at its own cost and expense, and the above Closing date shall be adjusted accordingly. Buyer's failure to so notify Seller of any Objection shall constitute an acceptance of Seller's title. Buyer shall have twenty (20) days from receipt of a title endorsement or revised survey to notify Seller of Objections as provided above or its rights hereunder are waived.

(B) If Seller is unwilling or if, after reasonable effort, Seller is unable to cure any Objection as above provided, Seller shall so notify Buyer within 30 days from the date Seller is notified, in writing, by Buyer of any Objection, and Buyer at its election may terminate this Agreement or take title subject to any Objection with or without any abatement in the purchase price as negotiated and mutually agreed to by Buyer and Seller. In the event of Buyer's termination, Seller shall return to the Buyer the above Deposit, which Buyer shall accept in full satisfaction of any and all claims under or related to this Agreement.

5. **Construction and Renovations Trades Agreement**

Buyer agrees to use Philadelphia Building Trades for all construction and renovation of the property as described in the Agreement between USS Real Estate a division of United States Steel Corporation and the

Philadelphia Building Trades; said copy of this "Trades Agreement" is furnished as Exhibit "E". The "Trades Agreement" has no requirement for the affiliation or lack thereof, of the Buyers employees.

6. **Due Diligence**

(A) Buyer shall have the right, after the Contract Date and upon advance notice to Seller, to access the Premises to inspect, investigate and conduct due diligence as to matters relating to the Premises, including but not limited to the environmental conditions, Purchase money mortgage financing, zoning, governmental approvals, road access, property taxes, and any other conditions that Buyer deems necessary; provided that Buyer delivers to Seller, in advance of entry, written notice of Buyer's intent to conduct due diligence and the name of any consultant, agent, contractor or other who Buyer desires to enter the Premises for this purpose, with Buyer's request that access be granted to such person or persons. Seller agrees to use its best efforts to respond to such request from Buyer within three (3) days of receipt, and with Seller's approval, Buyer shall have the right thereafter, at its own risk, cost and expense, to enter, or cause its approved agents and representatives to enter upon the Premises, upon advance notice to Seller, for the purpose of making surveys, tests, borings, inspections, investigations, or conducting any architectural, engineering, structural, economic, environmental, mechanical and any other study of the Premises as Buyer deems necessary. Seller will provide access to available and relevant documents and records. Buyer has ninety (90) days from the Contract Date to complete their investigation and due diligence (hereinafter "Due Diligence Period") unless extended by written agreement of Seller.

(B) Buyer agrees that they will keep confidential and not disclose to any third party except its attorneys, lenders, and consultants, any of the due diligence materials and any additional environmental, and/or other studies, tests, reports, and other documents generated in the due diligence activities or related activities that may be conducted by either party. Any final report, analytical data, survey, and/or drawing generated during the due diligence period by Buyer shall be provided to Seller within a reasonable time period prior to Closing. All due diligence materials shall be delivered to Seller immediately upon the termination of the agreement or in the event the transaction contemplated by the parties fails to close.

(C) The confidentiality obligation herein does not apply to any information that (i) is public knowledge on the date hereof; (ii) is in Buyer's possession on the date hereof; (iii) becomes public after the date hereof other than due disclosure by Buyer or its attorneys, lenders, or consultants; (iv) is obtained by Buyer from an independent third party who Buyer reasonably believes after due inquiry is free to deliver such material free of any confidentiality obligation; or (v) is the subject of any court order or other legally-mandated disclosure.

(D) Buyer shall indemnify, defend, and hold harmless Seller from and against any and all property damage, personal injury, and/or death claims, suits, demands, liabilities, damages, expenses and costs, (including attorney fees, consultant fees and other legal costs), of whatever kind or nature whatsoever that may arise out of or result from any claim, suit, act, judgement, demand or which may be brought against Seller relating to, or in any way associated with the conducting of any activity upon the Premises in connection with Buyer's due diligence investigation of the Premises. Buyer further agrees that before it or any of its consultants visit the Premises for due diligence purposes, it will obtain and maintain in full force and effect, or will cause its consultants to do so, Commercial General Liability insurance under an occurrence policy form in an insurance company or companies satisfactory to Seller, for bodily injury, including death, and property damage in a minimum amount of Two Million Dollars (\$2,000,000.00) per occurrence and Four Million Dollars (\$4,000,000.00) in the aggregate. Buyer further agrees that before it or any of its consultants or contractors visit the Premises, Buyer shall procure and maintain, and shall require its consultants and contractors to procure and maintain insurance policies in accordance with the terms and provisions outlined in Exhibit "I" attached hereto and incorporated herein, including without limitation, adding Seller as an Additional Insured; obtaining waiver of subrogation; agreeing to give Seller sixty (60) days' prior written notice upon policy cancellation or change; and providing subcontractor coverage (if applicable). Buyer further agrees to immediately provide a copy of Exhibit "I" to its insurance company and/or insurance agent. Upon Seller's consent, Buyer shall have the right, at its risk, cost and expense, to enter or cause its approved agents to enter upon the Premises in accordance with the consent of Seller.

(E) Seller shall cooperate with the Buyer in its dealings with governmental agencies during the period of time required for Buyer to secure all necessary permitting (the "Permitting Period"). This Agreement shall include mutually agreed upon milestones to monitor Buyer's progress for submission of required applications for requisite permits during the permitting period and milestones to monitor the progress of the necessary approvals by the appropriate governmental agencies.

(F) Buyer shall provide to Seller copies of all engineering plans, surveys, environmental site assessments, traffic generation reports, and all materials submitted to or received from any governmental entity or agency of or pertaining to the Property, which items, to the extent not already provided to Seller at the time of any termination of this Agreement, are to be delivered to Seller within twenty-one (21) days after such termination. Such items may be retained by and used by Seller after Closing or any termination of this Agreement, as the case may be, and Buyer shall provide such consents or other documentation as Seller shall request so that Seller may do so.

(G) If the results of the Buyer's investigation, study, test or report are not satisfactory to Buyer or Seller, or an unacceptable environmental concern is revealed, either Buyer or Seller in their sole and

absolute discretion and/or judgment may terminate this Agreement, by giving written notice to the other within thirty (30) days after the end of the Due Diligence Period and Buyer's Deposit will be returned and both Buyer and Seller shall be relieved of any further obligations under this Agreement; provided, however, each party shall pay their respective costs and expenses as provided in this Agreement.

(H) In the event Buyer elects to proceed with the purchase of the Premises with such environmental concern "AS IS, WHERE IS, WITH ALL FAULTS", Buyer shall not be entitled to any environmental indemnification regardless of whether the investigation, study, test or report identified or failed to identify any pre-existing environmental concern or condition on the Premises and/or adjustment to the purchase price as a result thereof. If for any reason the purchase is not subsequently closed, then Buyer shall grant Seller ownership of the final report by Buyer's consultant, with Seller having the right to utilize the report as if Seller had commissioned the site assessment.

(I) The provisions of this Section, its subparts, and Exhibit "I" shall survive delivery of the deed and termination of this Agreement.

7. Environmental.

A) Seller has provided Buyer with a copy of the Final Administrative Order on Consent (hereinafter referred to as "Consent Order") issued by the United States Environmental Protection Agency (hereinafter "USEPA") to United States Steel Corporation, effective April 20, 1993 and covering the Fairless Works facility and certain adjacent property at Fairless Hills, Pennsylvania as it relates to the Premises.

B) In the event that environmental studies result in the discovery of contamination existing as of the date of Closing on the Premises that is subject to requirements of the Consent Order, Seller will be solely responsible for any remediation costs that may be required to comply with the Consent Order or, at Seller's election, obtain a release from Pennsylvania Department of Environmental Protection ("PADEP") under Act 2. Buyer and Seller shall cooperate in applying for and obtaining the Act 2 Release or equivalent approval from PADEP or USEPA, at Seller's election; and the parties will share equally all costs other than remediation related to applying for and obtaining the release or approval. Buyer and Seller represent that they will utilize Langen Engineering to obtain the Act 2 releases.

C) Buyer and Seller agree that Seller shall remain responsible for remediation of groundwater under and as defined pursuant to the Consent Order. Buyer agrees that use of groundwater will be prohibited and further agrees to include the groundwater restriction in the deed. In addition, upon receipt of the release of liability letter form PADEP whether received before or after the sale, any chemical constituents identified

on site in the Remedial Investigation/Final Report above statewide residential health standards shall also be acknowledged in the deed as required by Act 2.

D) The Consent Order requires Seller to take certain environmental measures, to investigate the nature of certain constituents in the groundwater and to perform certain corrective measures, if required, to the facility as described therein, including the Premises. The Consent Order provides that no change in ownership of any property covered by the Consent Order can affect Seller's obligations to remediate groundwater under the Consent Order.

E) Buyer grants to Seller, its agents, contractors, consultants and assigns a right of reasonable access to perform work to and on the Premises in the event Seller is required to implement and comply with Act 2 or the Consent Order to remediate any environmental condition, including the right to operate all equipment, tools, vehicles and machinery required for investigative and corrective work. Seller shall notify Buyer of any intended use of the Premises, and Seller shall coordinate any use of the Premises with Buyer's use and rights. Such notice shall be given at the earliest possible time thereby allowing for the longest possible preparatory period. Upon completion of its work, Seller shall restore the Premises to its pre-existing condition to the extent reasonably permitted under the Consent Order or consistent with Act 2 obligations, if any. Buyer understands that the requirements of the Consent Order are extensive and comprehensive, and agrees that in addition to the presence of Seller on the Premises for compliance with the Consent Order and possible activities undertaken to obtain a release under Act 2, the USEPA has and PADEP have rights of access to the Premises.

F) Seller agrees to be responsible to Buyer, its successor, assign or lessee, for any damages, costs, penalties, fines or other liabilities for assessment, remediation or monitoring of environmental conditions on the Premises, incurred by Buyer and by any affiliates or successors thereof, and arising from Seller's failure to comply with the terms, conditions and provisions of the Consent Order, unless released or modified by or with the consent of USEPA, provided however, that Seller shall not be responsible to Buyer for any liability caused by or resulting in whole or in part from the activities of Buyer or its successors, assigns, contractors, agents, representatives or lessees. In the event that Seller, USEPA, or the PADEP, or any of their contractors, agents, or representatives shall require access to the Premises from time to time, for any reason relating to the Consent Order or Act 2, including, without limitation, any investigation or testing, or the performance of corrective measures, Seller shall take all reasonable actions necessary to mitigate the impact on Buyer's operations and facilities.

G) Buyer shall notify Seller immediately upon receipt of any proceeding, notice, order, citation, suit or any action or process directed to Seller concerning the Premises.

H) Seller shall notify buyer of any termination or change of the Consent Order bearing upon the Premises. Buyer recognized that the Consent Order does not terminate until Seller has satisfactorily completed all tasks required by the Consent Order, unless released or modified by or with the consent of USEPA, however Seller's obligations and all liabilities under this Article shall terminate upon receipt from the USEPA of written notice that the Premises is no longer subject to the terms of the Consent Order, or that Seller's obligations under the Consent Order have been satisfactorily completed.

I) Buyer shall be responsible for all environmental conditions causing or contributing to contamination of soil, groundwater, surface water, or air by pollutants or substances harmful to the human health, the environment or protected resources created after the Closing on, under, about or affecting the Premises and Buyer agrees to release and indemnify, defend and hold harmless Seller for any damages, costs, penalties, fines or other liabilities for assessment, remediation, restoration or monitoring of such environmental conditions and/or protected resources, incurred by Seller or any affiliates or successors thereof, and arising therefrom, including without limitation any such liabilities under authority derived from or by virtue of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA").

J) This Article shall survive the delivery of the Deed.

8. Acceptance of Deed.

(A) By acceptance of the Deed, Buyer will acknowledge that the Premises has been inspected by Buyer or its duly authorized agent, that the same is being purchased by Buyer in "AS IS, WHERE IS, WITH ALL FAULTS" condition. Seller shall not be responsible for any condition relating to or affecting the physical condition of the Premises, except as may specifically be set forth herein.

(B) *Upon Closing of this transaction between Seller and Buyer, Buyer shall be responsible for all environmental conditions affecting the Premises and hereby agrees to indemnify, defend, and hold harmless Seller for any such conditions.* The Deed shall contain the following language:

By its acceptance of this Deed, Grantee, on behalf of itself, its successors, and assigns, acknowledges that the physical and environmental condition of said property conveyed hereunder has been inspected by Grantee or its duly authorized agent and that said property is accepted by Grantee as a result of such inspection and not upon any agreement, representation, or warranty made by Grantor. Grantee accepts the physical and environmental condition of sold property "AS IS, WHERE IS, WITH ALL FAULTS" and hereby releases Grantor, its successors and assigns, from and against any and all liabilities of any nature known or unknown under CERCLA, RCRA, or the HMTA, or any other local, state, or federal laws, rules, regulations, or ordinances, and to indemnify, defend, and hold harmless Grantor from and against any cost, fine, penalty, or other liability of any nature, known or unknown, arising from or in connection with the physical or environmental condition of the Property. It is the express intention of the parties that this assumption,

release, and indemnity run with the Property and shall be binding upon all Grantee successors and assigns. (For the purpose of this provision, "CERCLA" shall mean and refer to the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, as amended; "RCRA" shall mean and refer to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, as amended; and "HMTA" shall mean and refer to the Hazardous Materials Transportation Act, 49 U.S.C. § 5102, *et seq.*, as amended.))

AS TO THE PHYSICAL CONDITION OF THE PREMISES PRIOR TO PURCHASER'S OWNERSHIP, NO PRIVATE RIGHT OF ACTION SHALL ACCRUE TO ANY PURCHASER OF THE PREMISES, WHETHER BY FORECLOSURE OR OTHERWISE, DUE SOLELY TO THE TAKING OF TITLE TO THE PREMISES AND ANY SUCH PURCHASER DOES WAIVE ANY AND ALL RIGHT TO CLAIM AGAINST GRANTOR AND GRANTEE, OR THEIR SUCCESSORS AND ASSIGNS, FOR ANY COST, LOSS, DAMAGE, OR LIABILITY SUCH PURCHASER OR ITS SUCCESSORS AND/OR ASSIGNS MAY INCUR AS A RESULT OF THE DISCOVERY OF A DEFICIENCY IN THE PHYSICAL CONDITION OF THE PREMISES OR THE NEED OR DESIRABILITY TO DO ANY REMOVAL, CORRECTIVE, OR REMEDIATION WORK INCLUDING, BUT NOT LIMITED TO WORK IN CONNECTION WITH HAZARDOUS MATERIALS OR WASTE PURSUANT TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT, AS AMENDED, OR THE RESOURCE CONSERVATION AND RECOVERY ACT, AS AMENDED, OR OTHER SIMILAR FEDERAL, STATE OR LOCAL LAWS, REGULATIONS, OR ORDINANCES.

(C) The Premises will be conveyed by a Special Warranty Deed, in substantially the form set forth attached hereto as Exhibit "B". The Deed will convey title to the Premises, subject to any and all highway, railroad, and other public or private rights or easements, existing in or across the Premises or any part thereof, and to the rights of any person or other party who may have any interest in the Premises.

(D) Seller and Buyer shall each execute and deliver to the other such other and further documents as each may reasonably request of the other in connection with the sale and purchase of the Premises.

(E) Possession of the Premises shall be given to Buyer at Closing by conveyance of the aforementioned Deed by Seller to Buyer and Buyer's acceptance thereof.

(F) The provisions of this Section and its subparts shall survive the delivery of the Deed to the Buyer and termination of this Agreement, if any.

9. **Closing.** The sale of the Premises shall be closed within 30 days from the end of the Due Diligence Period described in section 6 and no later than December 31st, 2007, at a time and location mutually agreeable to both parties (hereinafter "Closing"). At the Closing and upon payment in full of the Balance Due as stated above, Seller shall deliver the Deed to Buyer, which shall convey title to the Premises, free and clear of all liens and encumbrances, but subject to the following:

(A) any exceptions prevailing in title companies' policies;

- (B) any condition which a survey might show;
- (C) any condition which a physical inspection of the Premises would disclose;
- (D) all existing restrictions, easements, encroachments, rights-of-way, ordinances, laws, regulations, assessments, charges and taxes;
- (E) all utility easements whether recorded or not; and
- (F) any reservations or conditions as contained in the Deed.

Possession shall be given to Buyer at Closing.

10. **Default.**

(A) **Buyer's Default.** If Buyer fails to close the sale of the Premises as provided in this Agreement, the above Deposit shall be retained by Seller as liquidated damages, and Seller shall terminate this Agreement.

(B) **Seller's Default.** If Seller fails to close this sale, Buyer's sole remedies shall be specific performance or have Seller return the Deposit to Buyer and terminate this Agreement and these Buyer remedies shall be at Buyer's sole discretion.

(C) Upon termination by either Seller or Buyer, this Agreement shall be null and void.

(D) Each party shall be responsible for its own attorneys' fees and costs of litigation under this Section. Neither Buyer nor Seller shall be entitled to recover any costs incurred by it prior to the termination of this Agreement.

11. **Condemnation.**

(A) Seller represents and warrants that it has no knowledge of any existing or threatened proceeding of any entity to condemn the Premises or to take any part thereof under the right of eminent domain, and if Seller acquires such knowledge, Seller shall promptly notify Buyer.

(B) In the event that an eminent domain proceeding against the Premises has been commenced before the Closing, Seller or Buyer shall have the right to terminate this Agreement, whereupon Seller shall return Buyer's Deposit and this Agreement shall be null and void. If either party does not exercise this right, and the Premises are conveyed pursuant to this Agreement, Seller at Closing shall assign to Buyer all of its rights in the condemnation proceeding including all rights to compensation and awards.

12. **Zoning.** Seller and Buyer are informed that the Premises are zoned MPM or Materials Processing and Manufacturing. It is the Buyer's responsibility to confirm the zoning of the Premises and ensure that the zoning will allow for the Buyer's purpose and use intended. Any change in zoning desired by the Buyer shall be accomplished by Buyer at its own cost and expense, except that Seller shall execute any applications, requests or petitions which Buyer may request prior to Closing, provided that such applications, requests or petitions in Seller's opinion do not adversely affect the value of the Premises.

13. **Seller's Representations.**

(A) Seller is duly organized and validly existing, and in good standing under the laws of the State of Delaware and has full power, authority and capacity to own and operate its properties and assets and to carry on its business as heretofore conducted. Seller possesses full power and authority to enter into and perform under this Agreement and has been duly authorized to execute this Agreement and complete the transaction described herein.

(B) Seller represents and warrants that there is no pending or, to Seller's knowledge, any threatened litigation, proceeding or investigation relating to the Premises, or Seller's title thereto, or Seller's right to sell the Premises, nor does Seller have reasonable grounds to know of any basis for such litigation, proceedings or investigations.

(C) Seller represents and warrants that, to the best of its knowledge, information, and belief, the Premises are not in violation of any applicable federal, state or local statute, law or regulation, and Seller has received no notice from any governmental body claiming any violation of any law, ordinance, code or regulation, with which Seller has not complied. If there are any such notices, Seller shall promptly notify Buyer and provide Buyer with such copies.

(D) To the best of Seller's knowledge and in relation to the Premises, no assessments for public improvements have been filed against the Premises which remain unpaid and that no notice by any governmental or any public authority has been served upon Seller or anyone on Seller's behalf. Buyer will be responsible for any notices served upon Seller after the date of this Agreement and for the payment of any assessments and charges hereafter made for any public improvements, if work in connection therewith is hereafter begun on the Premises or directly related hereto.

(E) There are presently no tenancies, sub tenancies, sub licensees, or occupants (other than Seller), be they pursuant to agreement, at will or sufferance, at or affecting the Premises, nor will there be any at Closing without the prior written approval of Buyer.

(E) The provisions of this Section and the subparts shall survive the delivery of the Deed to Buyer and termination of this Agreement, if any.

14. **Real Estate Commissions.** Each of the parties represents and warrants that NAI Global (the "Brokers") are the brokers of record and are the only brokers entitled to commission in the execution of this Agreement, and each of the parties agrees to indemnify the other against and hold it harmless from all liabilities arising from any other claims (including, without limitation, the cost of counsel fees in connection therewith). Seller shall have the sole responsibility to pay any commissions due and owing to the Brokers in the amount defined by separate agreement.

(A) ***Buyer shall indemnify Seller against and hold harmless from*** any and all claims, liabilities, suits, damages, causes of action, judgments, verdicts, expenses or costs arising from any claim against Seller by any broker, agent salesperson or representative for any fees or commissions arising from the acts of Buyer related to this Agreement.

(B) ***Seller shall indemnify Buyer against and hold harmless from*** any and all claims, liabilities, suits, damages, causes of action, judgments, verdicts, expenses or costs arising from any claim against Buyer by any broker, agent salesperson or representative for any fees or commissions arising from the acts of Seller related to this Agreement.

(C) The provisions of this Section and the subparts shall survive the delivery of the Deed to Buyer and termination of this Agreement, if any.

15. **Right of First Offer.** Seller shall have a Right of First offer to purchase the Premises in the event Buyer elects to sell at anytime in the future. At any time after Buyer's purchase of the Premises, Buyer will advise Seller in writing that Buyer is interested in selling the Premises. Once Seller has received the aforementioned written notice from Buyer, Seller shall have twenty (20) business days from the date of said notice to advise Buyer of Seller's intent to purchase and to come to agreement on a contract for the purchase and sale of the Premises. If the Parties are unable to reach an agreement, Buyer will have the opportunity to place the Premises on the market. In the event that Buyer reaches agreement with a third party, Seller will have a First Right of Refusal to purchase the Premises per section 16. The provisions of this Section shall survive the delivery of the Deed to Buyer and termination of this Agreement.

16. **Right of First Refusal.** Seller shall have a Right of First Refusal to purchase the Premises in the event Buyer elects to sell at anytime in the future. At any time after Buyer's purchase of the Premises, Buyer may advise Seller in writing that Buyer has agreed to business terms with another qualified buyer for the sale of the Premises. Buyer shall provide a copy of the offer. Once Seller has received the aforementioned written notice from Buyer, Seller shall have thirty (30) business days from the date of said notice to advise Buyer of its intent to exercise its Right of First Refusal to commit, through formal documentation and agreements, to purchase the Premises and by remitting \$100,000 to Buyer, which amount shall be nonrefundable, but shall be deducted from the purchase price upon closing of the sale of the Premises. The provisions of this Section shall survive the delivery of the Deed to Buyer and termination of this Agreement.

17. **Rights of Repurchase for Lease Options.** Notwithstanding Paragraph 15 & 16, the provisions set forth therein shall not apply to purchase options as contained in any Leases which may be granted by the Buyer in the future. With regard to leases containing purchase options, the following procedures shall be used. In the event Buyer desires to execute a lease with regard to the property and same contains a purchase

option for the Tenant, the Seller will be provided with written notice of the purchase option terms prior to execution of the Lease. The Seller shall have 20 business days from the date of said notice to advise Buyer of its intent to exercise a right of first refusal with regard to repurchasing the property which repurchase would take place within 90 days of the notice regardless of the time frame for closing in the Lease purchase option. In the event Seller does not exercise the option, Buyer would be free to execute the Lease and Tenant would have the right to exercise its Lease purchase option in accordance with the Lease terms without any additional repurchase rights of the Seller.

18. **Assignment.** This Agreement shall not be assigned or transferred in any way by the Buyer unless Seller expressly consents to such assignment or transfer in writing.

19. **Merger and Survival.** The acceptance of the Deed provided herein by the Buyer shall be deemed to be a full performance and discharge of every term, covenant, or obligation on Seller's part to be performed pursuant to this Agreement, and no representation, term, covenant, warranty, or agreement of the Seller shall survive the delivery of the Deed unless they are specifically stated herein to survive.

20. **Amendments.** This Agreement may be amended, renewed, extended or canceled only by written instrument executed on behalf of each of the parties hereto by an authorized representative of each party, and neither party shall at any time in any way assert or contend that any amendment, extension or cancellation of this Agreement (or of any part or parts, including this paragraph, hereof) has been made other than by a written instrument so executed.

21. **Time of the Essence.** Time is of the essence with respect to the performance of all the terms, conditions, and covenants of this Agreement.

22. **Entire Agreement.** This Agreement constitutes and contains the entire and only Agreement between the parties, and supersedes and cancels any and all pre-existing agreements and understandings between the parties or any of them relating to the subject matter hereof. Any and all prior and contemporaneous negotiations and preliminary drafts and prior versions of this Agreement, whether signed or unsigned, between the parties or any of them leading up to its execution shall not be used by either party to construe the terms or affect the validity of this Agreement. No representation, inducement, promise, understanding, condition, or warranty not set forth herein has been made or relied on by either party.

23. **Third Parties.** Seller and Buyer do not intend to nor do they create any rights in any third party or person not a signatory to this Agreement.

24. **Compliance.** Buyer shall at all times with respect to performance of this Agreement comply with all statutes, laws, ordinances, rules, regulations and orders of all governmental, judicial, administrative,

or political persons or entities, and Buyer shall, at its own cost, obtain all permits, approvals, or variances required by its use of the Premises.

25. **Construction.** This Agreement shall be governed by and performed in accordance with the laws of the Commonwealth of Pennsylvania excluding its choice of law provisions.

26. **Notices.** All notices that may at any time be required to be given hereunder shall be deemed to have been properly given if personally hand delivered to the other party, or if sent by United States first class registered or certified mail, postage paid, or by facsimile transmission addressed, if sent to Seller as follows:

If to Seller: USS Real Estate Facsimile: (412) 433-5148
600 Grant Street, Room 1683
Pittsburgh, Pennsylvania 15219-2800
Attention: _____

With a copy to: United States Steel Corporation, Facsimile: (412) 433-2964
600 Grant Street, Room 1500
Pittsburgh, Pennsylvania 15219-2800
Attention: General Attorney, Real Estate

If to Buyer: Samax Enterprises Inc. and Yookel Inc.
29 Riverside Avenue, Building 2
Newark, NJ 07104-4237 Facsimile: () ____-____
Attention: _____

With Copy to
Bernd E Hefe Esq.
21 Bowling Green Parkway
Lake Hopatcong, New Jersey 07849

or to such other name and address as shall be furnished in writing by either party to the other. All notices shall be effective when received by the party to whom addressed.

27. **Captions.** The captions of paragraphs in this Agreement are used for convenience only and they in no way define, limit, or prescribe the scope or intent of this Agreement or any provisions hereof.

28. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of Seller and Buyer.

29. **Publicity.** This Agreement and all its contents are agreed to be confidential, and neither Seller nor Buyer shall release or disclose any material prior to the Closing. No press release nor other public disclosure shall be made by either party without submitting a copy to the other party for review and comment and approval.

30. **Time Extension.** If the last day for the performance of any act required to be performed under this Agreement shall fall upon a Saturday, Sunday, or legal holiday, the day for the performance of any such act shall be deemed to be extended until the next business day.

31. **Counterparts.** This Agreement may be signed in one or more counterparts, and by facsimile transmission, all of which shall be treated as one and the same original Agreement. Each party shall provide an executed copy to the other.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date(s) indicated herein.



United States Steel Corporation

By: [Signature]
Title: PRESIDENT
Dated: 9/18/07

Samax Enterprises Inc. and Yookel Inc.

By: [Signature] [Signature]
Title: REG
Dated: 9/11/07

EXHIBIT "A"

LEGAL DESCRIPTION LOT NUMBER 9

ALL THAT CERTAIN tract of land situate in the Township of Falls, County of Bucks, Commonwealth of Pennsylvania, as shown on Plan Sheet 9 of 13, titled "Subdivision Plan", dated November 10, 1987, as prepared by Showalter and Associates of Chalfont, Pennsylvania.

BEGINNING on the right-of-way line of New Ford Mill Road N 09 49' 02" W, a distance of 700.80 feet; thence N 82 55' 37" E, a distance of 898.65 feet; thence S 07 04' 23" E, a distance of 700.00 feet; thence S 82 55' 37" W, a distance of 865.10 feet to the Point and Place of BEGINNING.

CONTAINING: 14.172 Acres

PROJECT NUMBER: 6183

DATE: December 1, 1987
Revised December 18, 1987

Showalter & Associates

13

EXHIBIT "B"

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made on this, the ____ day of _____, 2007__, by and between UNITED STATES STEEL CORPORATION (hereinafter in the singular or plural referred to as the "Grantor"), of the one part, and Samax Enterprises Inc. , a New York corporation and Yookel Inc., a New York corporation, (hereinafter in the singular or plural referred to as the "Grantee"), of the one part, **W I T N E S S E T H**, that in consideration of the sum of Six Million, Three Hundred and Ninety Thousand Dollars (\$6,390,000), in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant, bargain, sell, alien, convey, confirm, and with **limited warranty** covenants unto Grantee, its successors, and assigns, the real property described in Exhibit "A" attached hereto and incorporated herein by this reference; **TOGETHER** with all improvements located thereon (hereinafter the "Premises"); subject to the following covenant, condition and restriction:

Grantee its successors and assigns shall not withdraw, use for human or animal consumption, industrial, agricultural or commercial applications, or otherwise disturb the groundwater on, upon or under the Premises, for any purpose whatsoever.

TO HAVE AND TO HOLD the aforesaid real property and improvements, together with all and singular the rights, members, hereditaments and appurtenances thereof, to the same being, belonging, or in any wise appertaining, to the only proper use, benefit, and behoove of Grantee, forever in **FEE SIMPLE**.

Grantor will, with **SPECIAL WARRANTY FOREVER DEFEND** unto Grantee, the right and title to the aforesaid real property and improvements against the claims of all persons claiming, owning, or holding by, through or under Grantor; provided, however, that Grantor makes and will not defend against, the matters set forth as indicated below:

1. Property taxes owing on the Premises which are not yet due and payable;
2. Government actions, including zoning restrictions and building and use restrictions, including variances;
3. All matters which a current and accurate survey or a physical inspection of the Premises would reveal;
4. All easements, covenants, conditions, licenses, rights of way, and restrictions recorded in the Bucks County records (other than judgments, mortgages, and other monetary liens);
5. All easements, licenses, rights-of-way for utility or rail services recorded in the Bucks County records.

NOTICE: Grantor hereby gives notice pursuant to the Pennsylvania Hazardous Site Cleanup Act (35 P.S. 50202.11, *et seq.*) and the Pennsylvania Land Recycling and Environmental Remediation Standards Act (Act 2, 35 P.S. 6020.101, *et seq.*) that:

[Identify environmental assessment report (if any), dated _____, _____, was issued by _____;

General taxes and special assessments for the year 2007 shall be prorated between Grantor and Grantee to the date of the Closing, such taxes for the year 2008 and thereafter to be paid by Grantee.

By its acceptance of this Deed, Grantee, on behalf of itself, its successors, and assigns, acknowledges that the physical and environmental condition of said property conveyed hereunder has been inspected by Grantee or its duly authorized agent and that said property is accepted by Grantee as a result of such inspection and not upon any agreement, representation, or warranty made by Grantor. Grantee accepts the physical and environmental condition of sold property "AS IS, WHERE IS, WITH ALL FAULTS" and hereby releases Grantor, its successors and assigns, from and against any and all liabilities of any nature known or unknown under CERCLA, RCRA, or the HMTA, or any other local, state, or federal laws, rules, regulations, or ordinances, and to indemnify, defend, and hold harmless Grantor from and against any cost, fine, penalty, or other liability of any nature, known or unknown, arising from or in connection with the physical or environmental condition of the Property. It is the express intention of the parties that this assumption, release, and indemnity run with the Property and shall be binding upon all Grantee successors and assigns. (For the purpose of this provision, "CERCLA" shall mean and refer to the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, as amended; "RCRA" shall mean and refer to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, as amended; and "HMTA" shall mean and refer to the Hazardous Materials Transportation Act, 49 U.S.C. § 5102, *et seq.*, as amended.))]

AS TO THE PHYSICAL CONDITION OF THE PREMISES PRIOR TO PURCHASER'S OWNERSHIP, NO PRIVATE RIGHT OF ACTION SHALL ACCRUE TO ANY PURCHASER OF THE PREMISES, WHETHER BY FORECLOSURE OR OTHERWISE, DUE SOLELY TO THE TAKING OF TITLE TO THE PREMISES AND ANY SUCH PURCHASER DOES WAIVE ANY AND ALL RIGHT TO CLAIM AGAINST GRANTOR AND GRANTEE, OR THEIR SUCCESSORS AND ASSIGNS, FOR ANY COST, LOSS, DAMAGE, OR LIABILITY SUCH PURCHASER OR ITS SUCCESSORS AND/OR ASSIGNS MAY INCUR AS A RESULT OF THE DISCOVERY OF A DEFICIENCY IN THE PHYSICAL CONDITION OF THE PREMISES OR THE NEED OR DESIRABILITY TO DO ANY REMOVAL, CORRECTIVE, OR REMEDIATION WORK INCLUDING, BUT NOT LIMITED TO WORK IN CONNECTION WITH HAZARDOUS MATERIALS OR WASTE PURSUANT TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT, AS AMENDED, OR THE RESOURCE CONSERVATION AND RECOVERY ACT, AS AMENDED, OR OTHER SIMILAR FEDERAL, STATE OR LOCAL LAWS, REGULATIONS, OR ORDINANCES.

IN WITNESS WHEREOF, *Grantor has caused the within* Special Warranty Deed *to be executed and delivered by its duly-authorized officer, its seal to be affixed, and the execution*

and the execution and sealing of these presents to be attested by its Secretary or Assistant Secretary, all as of the day and year first above written.

ATTEST:

UNITED STATES STEEL CORPORATION

By: _____

Title: President, USS Real Estate, a division
of United States Steel Corporation

Dated: _____

COMMONWEALTH OF PENNSYLVANIA :
 : ss:
COUNTY OF ALLEGHENY :

I, a notary public for the said County and Commonwealth, do hereby certify that _____ personally appeared and is known to me to be the **President of USS Real Estate, a division of United States Steel Corporation**, a Delaware corporation, and that _____ also personally appeared and is known to me to be the Secretary / Assistant Secretary of said corporation, both of which are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day, in person and severally acknowledged that, as such officers, they signed and delivered said instrument as officers of said corporation, and caused the seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal on this, the ____ day of _____, _____.

Notary Public (SEAL)

SPECIAL WARRANTY DEED

FROM:

USS Real Estate, a division of United States Steel Corporation
600 Grant Street, Room 1683
Pittsburgh, Pennsylvania 15219-2800

TO:

Samax Enterprises Inc. and Yookel Inc.
29 Riverside Avenue, Building 2
Newark, NJ 07104-4237

TO THE RECORDER OF DEEDS OF BUCKS COUNTY,
COMMONWEALTH OF PENNSYLVANIA

AFTER RECORDING DEED,
KINDLY MAIL TO:

1. The undersigned does hereby certify that its exact mailing address is:

By: _____

Title: _____

Dated: _____

EXHIBIT "D"

UTILITY PROVISION AND SERVICES AGREEMENT

This Utility Provision and Services Agreement ("Agreement") made and entered into as of _____ 2007, by and between United States Steel Corporation, a Delaware corporation (hereinafter referred to as "Seller"), and Samax Enterprises Inc. a New York corporation and Yookel Inc. a New York corporation (hereinafter referred to as "Buyer").

WITNESSETH:

WHEREAS, Seller desires to provide certain utilities and utility services, including but not limited to the sale of natural gas and electricity, to Buyer for use in connection with Buyer's property described in Exhibit "A" attached hereto (the "Property"), and Buyer wishes to purchase such services from Seller, under the provisions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and intending to be legally bound, the parties do agree as follows:

ARTICLE I TERM

The term of this Agreement shall commence on the above date and shall continue through the earliest of such time as (a) Seller assigns its rights and delegates its duties to (i) a regulated utility, (ii) a government entity, (iii) a cooperative or owners association reasonably satisfactory to Buyer, or (iv) another qualified, responsible third party experienced in the purchase and distribution of electricity; (b) Seller's provision of such service becomes illegal, in which case Seller will use its best efforts and work with Buyer to make alternative arrangements for the provision of such service to the Property; (c) Buyer's material breach of this

Agreement and failure to cure such breach as provided herein; or (d) Buyer's termination of this Agreement upon thirty (30) days written notice. This Agreement also may terminate as further provided herein.

ARTICLE II **SERVICES**

In addition to the supply of electric and natural gas, the services available from Seller are as described in this Article II. Of these available services, the specific services which Seller shall provide and Buyer shall purchase hereunder are as designated on Exhibit "B" hereto, which Exhibit "B" is incorporated herein and made a part hereof.

Available Services:

(b) Process Water. *Not an anticipated use*

Seller will supply unfiltered river water pumped from the Delaware River through existing pipelines at various temperatures and at pressures from 50 to 90 psig. Process water will be made available up to quantities identified in Exhibit B. Any additional quantities may be supplied only by further mutual agreement of Seller and Buyer.

(c) Potable Water.

Seller shall supply through existing facilities potable water to be used for drinking and sanitation purposes only. Potable water will be supplied in accordance with federal, state and local standards governing the Property or applicable to the parties. Potable water will be made available up to quantities identified in Exhibit B. Potable water will be delivered at pressures between 40 and 75 psig.

(d) Sanitary Sewage Treatment. *Not an anticipated use*

Seller shall treat and dispose of sanitary sewage generated by Buyer at its facilities located on the Property. Buyer shall not introduce sanitary sewage generated by Buyer at any location other than the Property into Seller's sanitary sewage system. Except as hereinafter provided, Buyer shall not discharge or cause or permit to be discharged any of the following described wastes or waters into Seller's sanitary sewage system:

- (1) Any liquid or vapor having a temperature higher than 100 degrees F.
- (2) Any water or waste containing more than 100 ppm by weight of fats, oils, or grease.
- (3) Any liquids, solids, or gases which by reason of their nature or quality may cause fire or explosion, or be in any other way injurious to persons, to the collection systems, sewage works structures or to the operation of these works.
- (4) Any noxious or malodorous gas or substance, which either singly or by interaction with other wastes, is capable of creating a public nuisance or hazard to life or preventing entry into sewers for their maintenance and repair.
- (5) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, bones, feathers, tires, plastic, wood or any other solids or viscous substances capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewerage system or the sewage treatment works.
- (6) Any water or waste having a pH lower than 6.0 or higher than 9.0 or having any corrosive property capable of causing damage or hazards to structures, equipment, or personnel of the sewage works.

- (7) Any water or waste containing any toxic substances in quantities sufficient to interfere with the biochemical processes of the sewage treatment works and exceed the state or federal requirements for the receiving stream.
- (8) Any water or waste containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.
- (9) Any toxic radioactive isotopes, without special permit.
- (10) Any water or waste that contains fluoride in excess of a concentration determined by multiplying 1.2 ppm by the ratio of the average flow in the receiving stream to the design flow of the sewage treatment works.
- (11) Any garbage, except garbage properly ground in a garbage grinding device conforming to the requirements of the Township of Falls Plumbing Code.

Buyer shall not discharge or cause or permit to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial or commercial process water into Seller's sanitary sewage system.

Buyer shall not discharge cooling water from air conditioning units with cooling towers or recirculating systems or from air conditioning units using flow through or unrecirculating systems.

Seller may impose, in its sole and absolute judgment, prohibitions against specific types or strengths of any wastes or other substances (in addition to those previously set forth) which may be harmful to the Seller's sewage system or which any authority or municipality to which sewage is or may in the future be conveyed prohibits from discharge to its interceptor, treatment and disposal facilities to which the Seller's sewage system is connected. Such prohibitions may be modified from time to time by the Seller, in its sole and absolute discretion.

Seller shall have the right to sample the Buyer's water and inspect the Buyer's sewage system at any time.

(e) Process Waste Water Treatment. *Not an anticipated use.*

Seller shall treat Buyer's process water waste stream in a manner sufficient to satisfy applicable discharge standards; provided, however, that Buyer shall pre-treat its process water waste stream prior to treatment by Seller in a manner sufficient to satisfy, in Seller's sole and absolute judgment, such standards as Seller establishes from time to time, it being the intent of this Agreement that Buyer's process water waste stream as delivered to Seller for treatment shall not contain any substance or chemical constituent, or have any physical characteristic (e.g., excessive temperature), which would render Seller unable, without additional expense, to achieve compliance with Seller's NPDES permit. Both parties agree that if compliance cannot be achieved with the permit, Buyer shall cease discharging its process wastewater to the terminal treatment plant of Seller.

Buyer will maintain a program of sampling and analyses of the process wastewater flow as described herein. All analyses will be performed by an independent laboratory chosen by Buyer that is acceptable to Seller. Except as otherwise expressly provided herein, all analyses shall be accomplished at the cost and expense of Buyer. All analyses and other monitoring data will be made available to Seller at any time upon the request of Seller. Buyer shall summarize the analyses and other monitoring data on a monthly basis and submit it to Seller within 15 days after the end of each calendar month.

The process wastewater discharged into Seller's facilities will be monitored twice per week for compliance with the specifications established by Seller from time to time. Samples will be collected by means of an automatic 24 hours composite sampler capable of collecting 24 individual hourly samples. All analyses with the exception of oil and grease will be performed on a final composite sample. Oil and grease samples will consist of 3 individual grab samples collected at equally spaced intervals during a 24-hour period; an analysis will be performed on each grab sample separately. At least one of the twice per week samples will be scheduled to coincide with weekly samples collected by Seller at the discharge from Seller's

terminal treatment plant. The remaining sample will be taken in such a fashion to insure that the sample will be representative of actual discharges. In addition to the twice per week sampling, Buyer will collect daily 24-hour composite samples consisting of 24 individual hourly samples. These samples will be maintained for an appropriate period of time to allow Seller the opportunity to visually inspect the quality of each sample and at Seller's option and cost to analyze such samples. Seller may require Buyer to stop the flow of process wastewater until any necessary remedial action is taken.

(f) Storm Water Runoff. During the term hereof, Seller shall permit Buyer to discharge storm water from the Property through the existing storm water collection system under Seller's NPDES permit. Buyer shall be responsible for any sampling, testing, observation, plan preparation, or facility installation if required by any agency or if required by Seller to ensure compliance with the NPDES permit. At all times, discharges of storm water from Buyer's facilities shall comply in all regards with the requirements of Seller's permits as though said permits apply directly to Buyer's discharges into the storm water flow of Seller. Buyer shall allow only non-contaminated water to enter the storm waste collection system.

(g) *Seller will maintain its various systems for the provision of the specific services purchased by Buyer hereunder and serving the Property in good working order and condition.*

ARTICLE III RATES

(a) The rates for the specific services purchased by Buyer hereunder shall be as set forth on Exhibit "B" hereto.

(b) At any time during the term of this Agreement, Seller may, by written notice to Buyer, propose a new rate for any service designated on Exhibit "B" hereto to replace the rate then currently effective for such service, to be effective on the date specified in such notice. If Buyer does not reject the proposed new rate by written notice delivered to Seller within thirty (30) days, then the proposed new rate shall take effect as aforesaid. If Buyer so rejects the proposed new rate, then the service affected shall

terminate on a date specified by Buyer not later than one hundred-eighty (180) days after the delivery to Seller of Buyer's notice of rejection; provided, that the applicable rate for such service hereunder from the proposed effective date of the new rate to the date of termination shall be calculated in the manner applicable at the time Seller so proposes the new rate. Buyer may revoke its notice of rejection in writing up to forty-five (45) days before such service hereunder is so to terminate, and in such case the proposed new rate shall be effective as of the date originally proposed by Seller.

(c) The rate for electricity delivered hereunder will be as indicated on Exhibit B. Adjustments to the rate shall be based on Seller's cost of power and reasonable costs of maintaining Seller's electrical distribution system serving the Property. Adjustments to the rate also may be made to reflect Buyer's change in usage. If Seller wishes to adjust the rate, Seller shall, by written notice to Buyer, propose a new rate to replace the rate then currently effective, such new rate to be effective on the date specified in such notice. If Buyer does not reject the proposed new rate by written notice delivered to Seller within thirty (30) days, then the proposed new rate shall take effect as aforesaid. If Buyer so rejects the proposed new rate, then this Agreement and electric service hereunder shall terminate on a date specified by Buyer not later than one hundred-eighty (180) days after the delivery to Seller of Buyer's notice of rejection; provided that the applicable rate for electricity sold and purchased hereunder from the proposed effective date of the new rate to the date of termination shall be calculated in the manner applicable at the time Seller so proposes the new rate. Buyer may revoke its notice of rejection in writing up to forty-five (45) days before service hereunder is so to terminate, and in such case the proposed new rate shall be effective as of the date originally proposed by Seller. If Buyer rejects the proposed new rate and this Agreement terminates, Buyer shall have the right to receive electricity over Seller's electrical distribution system set forth in Article XIII hereof.

(d) The rate for natural gas delivered hereunder will be as indicated on Exhibit B. Adjustments to the rate shall be based on Seller's cost of gas and reasonable costs of maintaining Seller's natural gas distribution system serving the Property. Adjustments to the rate also may be made to reflect Buyer's change in usage. If Seller wishes to adjust the rate, Seller shall, by written notice to Buyer, propose a new rate to

replace the rate then currently effective, such new rate to be effective on the date specified in such notice. If Buyer does not reject the proposed new rate by written notice delivered to Seller within thirty (30) days, then the proposed new rate shall take effect as aforesaid. If Buyer so rejects the proposed new rate, then this Agreement and natural gas service hereunder shall terminate on a date specified by Buyer not later than one hundred-eighty (180) days after the delivery to Seller of Buyer's notice of rejection; provided that the applicable rate for natural gas sold and purchased hereunder from the proposed effective date of the new rate to the date of termination shall be calculated in the manner applicable at the time Seller so proposes the new rate. Buyer may revoke its notice of rejection in writing up to forty-five (45) days before service hereunder is so to terminate, and in such case the proposed new rate shall be effective as of the date originally proposed by Seller. If Buyer rejects the proposed new rate and this Agreement terminates, Buyer shall have the right to receive natural gas over Seller's natural gas distribution system set forth in Article XIII hereof.

ARTICLE IV

INTERRUPTION OF SERVICE

(a) Buyer acknowledges that the services which Seller provides to Buyer hereunder are interruptible, in whole or in part, at the sole and absolute discretion of Seller. Buyer further acknowledges that Seller may be providing services identified in this Agreement to other customers at Fairless, Pennsylvania, and further agrees that Seller shall have no duty to interrupt service to Buyer and to any other customer or customers on the same basis, but may use its sole and absolute discretion in determining which customers to interrupt and to what degree. Seller shall give Buyer maximum notice of interruption or reduction of service as is reasonable under the circumstances imposed upon Seller. Buyer shall immediately cease or reduce its use of the affected service in accordance with any notice given to buyer by seller or by any of seller's suppliers, as applicable, and shall immediately and fully advise seller of all notices of interruption or reduction it receives from seller's suppliers. If buyer does not so cease or reduce its use of the affected service, seller shall have the right, but not the duty, unilaterally and without further notice to

terminate or reduce the affected service for the duration of the interruption without liability to buyer of any kind, including but not limited to liability for costs, expenses, injury, loss or damage (whether direct, consequential or incidental), loss of sales, profits or production, or increased cost of operation. Further, buyer shall be solely responsible for and shall indemnify, defend and save harmless seller against and from all costs, expenses, losses, claims, liabilities, charges, fines and penalties (including attorney's fees) of any nature imposed upon either seller or buyer and arising out of buyer's failure to comply with notices from seller or seller's suppliers pertaining to interruption or reduction of service hereunder. Buyer acknowledges that Seller will not supply any quantity of emergency service, electricity or gas during periods of total interruption of service and, during periods of partial interruption, may not be able to supply all of Buyer's requirements for such purpose. Seller will notify Buyer when normal service may resume.

(b) Nothing in this Agreement shall be construed to limit the right of Seller to modify or terminate its agreements with its suppliers from time to time or to enter into agreements with other suppliers of Seller's choice which agreements are similar or dissimilar to those currently in effect, all of which Seller may do in the exercise of its sole and absolute discretion. Seller may make any such modifications, terminate any such agreements or enter into any such other agreements without regard to the fact that services are provided to Buyer hereunder. Buyer hereby acknowledges that penalty charges for unauthorized consumption of natural gas during times of interruption applicable to Seller and for which Buyer is responsible under this Article IV may be substantial. Further, nothing in this Agreement shall require Seller to own or operate electric generating facilities at Fairless, Pennsylvania and Seller may terminate any such ownership or cease, temporarily or permanently, any such operation at any time in its sole and absolute discretion without notice to Buyer.

(c) Unless otherwise agreed in writing by Seller and Buyer, all electric service hereunder shall be interruptible. Buyer's anticipated maximum usage is indicated on Exhibit B. Seller agrees to deliver electricity to the Property to satisfy this anticipated load in accordance with the terms of this Agreement.

(d) Buyer's Maximum Daily Quantity ("MDQ") of natural gas and the maximum flow rate are indicated on the Exhibit B. Seller agrees to deliver natural gas to the Property to satisfy this anticipated MDQ in accordance with the terms of this Agreement. Seller shall not be obligated to deliver more than the MDQ on any day; provided however, that additional volumes of natural gas may be sold and purchased pursuant to this Agreement upon mutual written agreement.

(e) Except as provided below and when requested by Seller, Buyer shall notify Seller by telephone, confirmed by FAX transmission by 8:00 a.m. each day of the quantity of natural gas which Buyer intends to purchase hereunder for consumption during the succeeding day ("daily nomination"), up to Buyer's MDQ. Buyer's daily nominations for Saturday, Sunday and Monday shall be made on the preceding Friday. Seller shall have no obligation to deliver to Buyer more than the amount of gas nominated for a day. Seller may require Buyer to make its daily nominations on the basis of Buyer's anticipated consumption in eight (8) hour increments, in order to assist Seller's local gas dispatcher. Buyer shall notify Seller by FAX transmission by 8:00 a.m. of the sixth business day before the end of each calendar month of the quantity of natural gas on an average daily basis which Buyer intends to purchase hereunder for consumption during the next calendar month, including Buyer's daily nomination for the first day of such month. For purposes of this Article III (b), Seller's number for telephone notice shall be (215) 736-6723, the number for FAX transmission shall be (215) 736-3940 and the term "day" shall mean a "day" as defined for purposes of the gas balancing provisions applied to Seller from time to time.

(f) Buyer shall reimburse Seller for any costs, penalties or charges of any kind, including gas balancing charges, imposed upon Seller as a result of any variance between Buyer's daily nominations and Buyer's actual consumption of natural gas. If the imposition of such costs, penalties or charges results from variations between daily nominations and actual consumption of natural gas by Buyer and other of Seller's customers, Seller may apportion responsibility for such costs, penalties or charges between and among Buyer and such other customers in such manner as Seller in its sole and absolute discretion deems reasonable. In the event the provisions under which any such costs, penalties or charges are imposed upon Seller change for any

reason, Seller may, by written notice given pursuant to Article XIV(e), modify this Agreement effective as of the date of such change, so that the provisions of this Agreement always remain consistent with such provisions as are applicable to Seller, it being the intent of this Agreement that Seller shall at all times be protected against any and all costs, penalties or charges, however denominated, imposed upon it due to variations in Buyer's consumption hereunder.

ARTICLE V
POINTS OF SERVICE; POINT OF DELIVERY; QUALITY OF SERVICE

(a) Seller shall provide services hereunder to Buyer at the boundary line of the Premises at the locations designated by Seller.

(b) Seller shall meter electricity to Buyer hereunder typically at the secondary side of the transformer or at the individual breaker(s) serving the facility.

(c) Seller shall deliver natural gas to Buyer hereunder at a location within the property but exterior to any building structures.

(d) Electricity supplied hereunder shall be nominally sixty cycle, alternating current, in the form indicated on Exhibit B; *provided, however*, that the voltage or other characteristics of such electricity may vary from time to time depending upon the voltage or other characteristics of the electricity being supplied to or generated by Seller, and Seller shall have no liability to Buyer for damages of any kind arising from such variations.

(e) Seller shall deliver to Buyer natural gas of quality equal to the average quality of that natural gas received by Seller for delivery to Buyer. Delivery pressure to Buyer shall be as indicated on Exhibit B.

(f) Seller will maintain the electrical and natural gas distribution system serving the Premises in good working order and condition.

ARTICLE VI
MEASUREMENT

Seller shall install (at Buyer's expense), own, maintain, operate, inspect, adjust and read the meters used for record-keeping and billing purposes hereunder. If Seller or Buyer reasonably believes that a meter is reading inaccurately, it may request a test of the meter. Seller will notify Buyer of the date and time for each test and permit Buyer to witness the test. If the meter is found to be reading beyond a tolerance of plus or minus two percent (2%), the parties shall determine the difference in volume of measurement by reason of the deviation from the applicable tolerance by assuming that such deviation occurred thirty (30) days prior to such test, and, in such case, the amounts for which payments have been made plus the amounts then payable shall be adjusted by one-half such assumed difference and a payment shall be made or credit issued accordingly. If Buyer requests a test of any meter, Buyer shall pay Seller's estimated costs of the test in advance, subject to refund of such costs if the deviation is found to be greater than two percent (2%). Subject to adjustment as provided in the second sentence immediately preceding this sentence, all meter readings shall be deemed final.

ARTICLE VII

PAYMENT

(a) On or before the tenth day of each month, Seller shall invoice Buyer for all services provided and purchased hereunder and for all other amounts for which Buyer is responsible hereunder, incurred for the preceding calendar month; provided, however, that if the amount of any item is uncertain for any reason, Seller may invoice Buyer on an estimated basis, subject to adjustment by additional payment or credit at such later time as the uncertainty is resolved. Additionally, non-energy Utilities may be invoiced Quarterly as determined by Seller. Buyer shall pay all such invoices within ten days of the date of the invoice. Upon request of Buyer, Seller shall supply to Buyer reasonable data in support of all charges invoiced. Buyer shall pay interest to Seller on all payments made after the due date at the rate in effect at the time as set forth in Seller's Terms and Conditions issued under Article XI hereof. Seller may discontinue service at any time Buyer is delinquent in making a payment or performing any other obligation hereunder, or is in default under

the provisions of any other agreement between Seller and Buyer, if such default continues for more than ten (10) days after written notice is given to Buyer that payment is due in the case of a payment default or twenty (20) days after written notice of default in the case of a non-payment default. In the case of a non-payment default that cannot reasonably be cured within the twenty (20) day cure period, Seller shall not discontinue service so long as Buyer is working diligently to cure such default and such default is not causing harm to a utility system of Seller (provided that such default is not causing harm to Seller's distribution system).

(b) Seller and Buyer, respectively, shall designate the addresses to which payments and invoices shall be sent, by written notice given in accordance with Article XIII hereof.

ARTICLE VIII **ASSIGNMENT AND WARRANTY**

(a) This Agreement shall be binding upon and inure to the benefit of Seller and Buyer and their respective successors and permitted assigns. Buyer may assign its rights and delegate its duties hereunder only upon the written consent of Seller. Provided that Buyer has fully performed its then existing obligations under this Agreement, including the making of its final payment pursuant to Article VII hereof, Buyer, upon said assignment, shall be released from all future obligations hereunder except Buyer's indemnity obligations that arose prior to the date of assignment and that survive as provided in Article XIII(g). Seller may assign its rights and delegate its duties to (i) a regulated utility, (ii) a government entity, (iii) a cooperative or owners association reasonably satisfactory to Buyer; or (iv) a qualified, responsible third party experienced in the provision of the services provided to Buyer hereunder and, upon such assignment, Seller shall be released from all future obligations hereunder except Seller's indemnity obligations that arose prior to the date of assignment and that survive as provided in Article XIII(g). Seller also may subcontract the performance of its obligations hereunder.

(b) Seller hereby warrants that it will, at the time of delivery to Buyer, have the right to sell to Buyer all utilities and services delivered hereunder, and Seller hereby agrees to indemnify and save harmless

Buyer from all suits, actions, accounts, costs, losses and expenses arising from or connected with the adverse claim of any person or persons to said utilities and services.

ARTICLE IX
FORCE MAJEURE

(a) If Seller or Buyer is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, Seller or Buyer shall give to the other party prompt written notice of the force majeure with reasonably full particulars thereof, whereupon the obligations of Seller or Buyer insofar as they are affected by the force majeure shall be suspended during the continuance of the force majeure; provided, however, that if Seller does not have the right, in response to a declaration of force majeure by Buyer, to reduce Seller's liability to its suppliers, then Buyer shall reimburse Seller for any resulting costs and expenses to Seller. Seller or Buyer shall use reasonable diligence to remedy the force majeure.

(b) The term "force majeure" as here employed shall mean an act of God, strike, lockout or other difference with workers or industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, storm, flood, freeze, explosion, or other casualty, compliance with laws, regulations or other governmental order (not resulting from the affected party's violation of applicable laws, regulations or governmental order), unavailability, shortage or failure of supply, equipment, material or labor, delay in or lack of transportation, breakdown or accident, and any other cause, whether of the kind specifically enumerated above or otherwise, all of the foregoing which is not reasonably within the control of the party affected to prevent or avoid the occurrence.

(c) The requirement that any force majeure shall be remedied with reasonable diligence shall not require the settlement of strikes, lockouts or other labor difficulty contrary to the wishes of the party suffering the difficulty; the manner in which such labor difficulty shall be handled shall be entirely within the sole and absolute discretion of the party suffering the difficulty.

(d) Nothing contained in this Article IX shall be interpreted to extend the term of this Agreement or the time for payment of any amount payable hereunder

ARTICLE X
DISCLAIMER OF LIABILITY; INDEMNIFICATION BY BUYER

(a) Seller will not be liable for any consequential or incidental damages, including but not limited to, loss of sales, profits or production or increased cost of operation, arising in connection with services provided to Buyer by Seller under this Agreement or the failure from time to time of Seller to provide such services.

(b) Buyer hereby agrees to indemnify, defend and hold harmless Seller against and from any and all claims, demands, fines, penalties, actions or causes of action at law or in equity, together with any and all expenses and costs (including attorney's fees) in connection therewith or related thereto, of any nature (1) incurred by reason of Buyer's failure to comply with the provisions of this Agreement or directions of Seller issued pursuant thereto, or (2) involving damage to property or injury to or death of any person, including but not limited to an employee of Buyer, or animals, arising out of Buyer's use of the services purchased hereunder, whether or not the damage to property, injury or death is caused or alleged to be caused in whole or in part by the conduct, fault or negligence of Seller.

(c) Buyer further agrees to indemnify, defend, and hold harmless Seller against and from any and all expenses, losses, claims, liabilities, fines, and penalties, including environmental response costs and attorney's fees, which Seller may incur as a result of Seller's treatment or disposal of Buyer's sewage, process waste water, and storm water.

(d) Notwithstanding anything herein to the contrary, Buyer acknowledges that Buyer has made its own investigation of the adequacy and sufficiency of the services provided to Buyer hereunder for Buyer's purposes and that Buyer has not relied upon any representation or warranty of Seller concerning the adequacy

or sufficiency of the services provided to Buyer hereunder for Buyer's purposes or as to the selection or non-selection of any equipment to be used by Buyer.

(e) Buyer shall use reasonable diligence not to harm the distribution, delivery or collection systems of Seller and shall indemnify, defend and hold harmless Seller against and from injury or damage thereto resulting from Buyer's systems, Buyer's equipment or other actions by Buyer beyond the delivery points.

ARTICLE XI **TERMS AND CONDITIONS**

Seller's obligation to provide services pursuant to this Agreement is subject in all respects to Seller's Terms and Conditions for Utility Services, Electrical Services and Gas Services, which Terms and Conditions are attached hereto as Exhibit C and incorporated herein as a part hereof. Seller may in its reasonable discretion amend, delete from and add to such Terms and Conditions at any time, which Terms and Conditions, as so amended, deleted from or added to, shall become effective and a part of this Agreement at such time as Seller shall designate, provided that written notice thereof shall be given to Buyer. In the event of a conflict between the provisions of this Agreement and the Terms and Conditions, the provisions of this Agreement shall control.

ARTICLE XII **BUYER'S RIGHTS TO ALTERNATIVE SERVICE**

Buyer shall have the right to obtain utility service from another source as described in the Order dated April 29, 1993 entered by the Pennsylvania Public Utility Commission in Docket P-00920285, regardless of whether such Order is subsequently modified or revoked. In exercising such right, Buyer shall have the right to receive utilities directly from the local public distribution company (LDC). In such event, Seller may charge Buyer for easement rights through Seller's lands or may charge Buyer for transportation, maintenance and administration for deliveries via Seller's facilities.

ARTICLE XIII
MISCELLANEOUS MATTERS

(a) The descriptive headings herein are for convenience only and shall not be used as an indication of the meaning of any of the provisions herein.

(b) Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights or remedies under or by reason of this Agreement. Each party represents that it is entering into this transaction as principal for its own account and not as an agent for any other party.

(c) This Agreement is deemed to be a contract entered into and shall be interpreted under the laws of the Commonwealth of Pennsylvania, except the provisions thereof pertaining to the conflicts of laws.

(d) This Agreement, together with the terms and conditions in effect from time to time, constitutes the entire agreement of the parties as to the subject matter hereof and, subject to the right of Seller to amend, delete from or add to the terms and conditions applicable to this Agreement pursuant to Article XI, may not be amended or modified except by a written document signed by both parties and stating that it is intended to amend this Agreement.

(e) All notices and written communications between the parties concerning this Agreement, except Seller's invoices and Buyer's remittances, shall be deemed to have been delivered when personally delivered to the other party or three (3) days after they are mailed by first-class mail, postage prepaid, addressed as follows:

If to Seller:

UNITED STATES STEEL CORPORATION
600 Grant Street, Room 1683
Pittsburgh, Pennsylvania 15219-2800
Attn: President, USS Real Estate

and

UNITED STATES STEEL CORPORATION
600 Grant Street, Room 1500
Pittsburgh, Pennsylvania 15219-2800
Attn: Attorney-Real Estate & Energy

If to Buyer: SAMAX ENTERPRISES INC. and YOOKEL INC.
29 Riverside Avenue, Building 2
Newark, NJ 07104-4237

Either party may change the address to which notice is to be sent by like notice.

(f) All references to "Seller" contained in the indemnification provisions of Article IV(A) and Article X shall include Seller, its affiliates and each of their directors, officers, employees and agents.

(g) All agreements to defend, indemnify and hold harmless contained herein and any other obligation incurred prior to the termination of this Agreement shall survive the termination of this Agreement.

(h) This Agreement is confidential and neither party shall disclose the terms and conditions hereof to a third party except: (i) with the written consent of the other party; (ii) as may be required by law, in which case the disclosing party shall give reasonable notice to the other party in order to permit the other party to seek an appropriate protective order; or (iii) to lenders, prospective purchasers or tenants, attorneys and consultants of a party.

(i) This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

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IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed in duplicate originals by their duly authorized officers as of the day and year first above written.

USS Real Estate, a division of United States Steel Corporation

By: _____

Its: _____

Samax Enterprises Inc. and Yookel Inc.

By: Perry Zhechen

Its: 1

EXHIBIT A
to
Utility Provision and Service Agreement

LEGAL DESCRIPTION
LOT NUMBER 9

ALL THAT CERTAIN tract of land situate in the Township of Falls, County of Bucks, Commonwealth of Pennsylvania, as shown on Plan Sheet 9 of 13, titled "Subdivision Plan", dated November 10, 1987, as prepared by Showalter and Associates of Chalfont, Pennsylvania.

BEGINNING on the right-of-way line of New Ford Mill Road N 09 49' 02" W, a distance of 700.80 feet; thence N 82 55' 37" E, a distance of 898.65 feet; thence S 07 04' 23" E, a distance of 700.00 feet; thence S 82 55' 37" W, a distance of 865.10 feet to the Point and Place of BEGINNING.

CONTAINING: 14.172 Acres

PROJECT NUMBER: 6183

DATE: December 1, 1987
Revised December 18, 1987

Showalter & Associates

PS

EXHIBIT B

TO UTILITY PROVISION AND SERVICES AGREEMENT
DATED _____, 2007, BY AND BETWEEN
USS REAL ESTATE, a division of UNITED STATES STEEL CORPORATION
AND SAMAX ENTERPRISES INC. and YOOKEL INC.

SERVICES

RATES

Electricity

____ N/A ____ per MKWH (1000 kwh)
____ N/A ____ per MKWH (1000 kwh)
____ expected kwh per summer day Max
____ expected kwh per winter day Max
____ expected annual consumption MKWH
____ expected connected capacity KVA

Natural Gas

____ N/A ____ Based MMBTU per month.
____ NYMEX plus ____ per MMBTU
____ expected MDQ (Max Daily Quantity)
____ expected Max hourly flow rate, CFH
____ expected delivery pressure

Process Water

____ \$1,200 per million used
____ Plus \$930 per quarter (8 inch service) ____
____ expected daily use gallons Max

Potable Water

____ \$4,400.00 per Million gallons (min 0.01)
____ Plus \$500.00 (4 inch service) per Quarter
____ expected daily use gallons Max

Sanitary Sewage Treatment

N/A – Not Applicable

Process Waste Water Treatment

N/A – Not Applicable

Storm Water Runoff

N/A – Not Applicable

Fire Hydrant Maintenance & supply N/A – Not Applicable

KIPC Common Area Maintenance \$500 per acre per annum

EXHIBIT C
To the Utility Provision and Services Agreement

Effective: October 1, 1998

UNITED STATES STEEL CORPORATION
TERMS AND CONDITIONS FOR
UTILITY SERVICES

1. Buyer shall present in writing to Seller a list of the equipment that is proposed to be attached to Seller's lines, together with such other pertinent information as Seller deems necessary. The point at which service will be brought in and the location of the metering device will be indicated by Seller. Seller will assume no responsibility to change its delivery point if the location is chosen without consultation with Seller or if the designated location is not utilized. Buyer should also obtain any necessary permits from public authorities, where applicable.
2. All equipment beyond the delivery point must be installed by and at the expense of Buyer subject to applicable safety requirements in force at the time work is begun on such installation. All equipment beyond the delivery point shall be the property of or leased by Buyer, and Buyer shall at all times be responsible for the installation and proper maintenance of the same. Seller shall have no obligation to inspect Buyer's equipment and facilities. Prior to service being established to a facility located within the jurisdiction of an inspecting authority, such as a city or county government, Buyer must arrange for such authority to inspect and approve the facility to assure compliance with codes or ordinances promulgated by the appropriate governmental authorities. All changes in equipment involving modifications must also be inspected and approved by such inspecting authority. Buyer shall deliver evidence of all such approvals to Seller before the commencement of service. Seller has the right to refuse or terminate service to any Buyer facility whenever Seller becomes aware that such facility is not in compliance with the above requirements. In no event shall Seller's facilities extend beyond the metering point on Buyer's facilities.
3. Buyer shall not connect piping containing potable water with piping containing anything other than potable water. Buyer shall be solely responsible for, and shall defend, hold harmless and indemnify Seller from and against, any liability for injury to person or property arising from or in connection with violation of this provision.
4. Buyer shall provide to Seller, free of expense to Seller, a suitable site for the meters and other equipment of Seller necessary for providing service.
5. All meters for measuring usage of services and all other equipment necessary for proper metering of such services will be furnished by and will remain the property of Seller. Access to the meters for reading, inspection, repair or other purposes will be furnished to authorized agents of Seller at all reasonable hours. In the event the metering equipment on Buyer's premises is altered or changed in any way so as to cause the meter or mechanical device for measuring the usage to give false registration or to fail to register the service consumed, Seller may without notice to Buyer, discontinue the involved service. If unauthorized use of service is discovered, the cost will be billed to Buyer for an estimate of the service used, the cost of inspection, investigation, reconnection, and cost of repair to Seller's facilities, all of which will be paid before the restoration of service.

6. Buyer shall notify Seller promptly of any defect in service or any trouble or accident involving a service.
7. The service connection, meters and equipment supplied by Seller for Buyer have a definite capacity and no major additions to the equipment connected thereto will be allowed except upon written permission by Seller. Failure to obtain such written permission shall render Buyer liable for any damage to Seller's equipment or system.
8. If the equipment in Buyer's premises are found by Seller's employees, agents or contractors to be defective, such that they may cause damage to the property of Seller, Seller may and discontinue service until such time as the defect is remedied by Buyer.
9. Buyer agrees to grant to Seller in form acceptable to Seller such unimpeded easements or other rights of access to Buyer's premises as are adequate, in Seller's sole and absolute judgment, to permit Seller to supply services to Buyer and to enforce Seller's rights and perform Seller's obligations under Seller's contract with Buyer. In particular, Seller's authorized employees, agents and contractors shall have unimpeded access to the premises of Buyer at all reasonable times for the purpose of reading meters and disconnecting service, and for installing, testing, inspecting, repairing, removing or changing any or all equipment belonging to Seller.
10. All equipment on Buyer's side of a service point shall be:
 - (A) furnished, installed and maintained at the expense of Buyer;
 - (B) owned or leased by Buyer;
 - (C) operated and controlled by or at the expense of Buyer; and
 - (D) the sole responsibility of Buyer; provided, however, that nothing hereunder shall transfer title to Buyer of any property leased to Buyer by Seller under separate agreement..
11. Changes in location of a delivery point, meter or connection made for the accommodation of Buyer must be acceptable to Seller, in its sole and absolute discretion, and shall be at the expense. of Buyer.
12. Seller shall have the right, but not the duty, to inspect any equipment before service is introduced and at any later time. Seller may refuse to connect and may elect to disconnect if, in its sole and absolute judgment, Buyer's installation is defective or does not comply with such reasonable requirements as may be necessary for safety, or is in violation of Seller's standard requirements. Such inspection or the failure to inspect, or failure to refuse to connect or to elect to disconnect, however, shall not render Seller liable or responsible for any loss or damage resulting from (A) defects in the equipment; (B) non-compliance with such reasonable requirements as may be necessary for safety; (C) violation of or non-compliance with Seller's standard requirements; (D) violation of these terms and conditions; or (E) accidents which may occur upon the premises of Buyer.
13. Seller may refuse to connect and may elect to disconnect if, in its sole and absolute judgment, Buyer's equipment or use thereof might adversely affect the Seller's equipment or system, or Seller's service to other customers.

14. In all cases services shall be delivered initially to Buyer at the points of delivery by or under the supervision of a representative of Seller.
15. Seller shall keep in repair and maintain its own property installed on the premises of Buyer in connection with service provided by Seller to Buyer; provided, however, that nothing hereunder shall release Buyer of any obligation of Buyer to maintain any property leased by Seller to Buyer.
16. Buyer shall be responsible for safekeeping of Seller's property while such property is located on Buyer's premises. In event of injury to or destruction of any such property, Buyer shall pay the cost of repair and replacement. Buyer shall not permit any person, except an employee, agent or contractor of Seller having a standard badge of Seller or other appropriate identification, to break any seals on, or to do any work on, any meter or other equipment of Seller located on Buyer's premises.
17. All equipment supplied by Seller shall remain its exclusive property and Seller shall have the right to remove the same from the premises of Buyer at any time after the termination of service.
18. The measurement of services shall be by meters furnished and installed by Seller. Seller will select the type and make of metering equipment and may from time to time change or alter the equipment, Seller's sole obligation being to supply meters that will accurately and adequately furnish records for billing purposes.
19. Seller shall have the right, at its option and sole expense, to place demand meters, special meters or other instruments on the premises of Buyer for the purpose of determining the adequacy of Seller's service or for making tests of all or any part of Buyer's load.
20. Seller may, upon request by Buyer, make tests to supply special information regarding Buyer's use of service, provided that the cost of such special tests shall be paid by Buyer.
21. If a due date for an invoice falls on a Saturday, Sunday, bank holiday or any other day when the office of Seller which regularly receives payments is not open, the due date shall be extended to the next business day.
22. When interest is applicable, the amount of interest to be added to the unpaid balance shall be calculated by multiplying the unpaid past due balance, including any previous unpaid interest charges, by an interest rate of one and one-half percent (1/2%) per month; *provided, however*, that in the event the interest rate so calculated and applied exceeds the applicable maximum lawful rate of interest, then such maximum lawful rate shall apply.
23. When Buyer has an unpaid balance which includes interest charges, any payment received by Seller will be applied first to the interest charge and then to the remainder of the unpaid balance.
24. If a check received in payment of Buyer's account is returned to Seller unpaid by Buyer's bank and cannot be redeposited by Seller for payment on the second attempt, a \$30.00 charge for the returned check will be added to Buyer's account.
25. Seller may discontinue services on reasonable notice if entry to its meter or meters is refused, if access thereto is obstructed or hazardous, or if services are taken without the knowledge or approval of Seller. Seller may discontinue service without notice for abuse, fraud, or tampering with the meters, connections or other equipment of Seller. Seller may discontinue services without

notice if, in Seller's sole and absolute discretion, Buyer's installation has become hazardous or defective or if Buyer's equipment or use might adversely affect Seller's equipment, system or service to other customers.

26. If service is discontinued on account of the act of Buyer, Buyer shall pay a reconnection charge for restoration of service. The reconnection charge shall be: (A) \$100.00 per account where termination was effected by shutting off at the meter location, or (B) actual cost where termination was effected by excavation or removing service connection(s). In no event shall service be restored unless in Seller's sole and absolute discretion the reason for discontinuance has been corrected to Seller's satisfaction.
27. Seller, by agreeing to provide services to Buyer and by supplying such services, does not assume any obligation or responsibility as to the condition of Buyer's equipment.
28. Buyer shall not resell services purchased from the Seller unless authorized to do so in writing by Seller.

**UNITED STATES STEEL CORPORATION
TERMS AND CONDITIONS FOR
ELECTRIC SERVICE**

1. Buyer shall, before wiring any building or site or purchasing any electrical equipment, present in writing to Seller a list of the equipment that is proposed to be attached to Seller's lines, together with such other pertinent information as Seller deems necessary. The point(s) at which service will be brought in and the location of the metering device will be indicated by Seller. Seller will assume no responsibility to change its delivery point if the location is chosen without consultation with Seller or if the designated location is not utilized. Buyer should also obtain any necessary permits from public authorities, where applicable.
2. All wiring and apparatus beyond the delivery point must be installed by and at the expense of Buyer subject to the requirements of the National Fire Protection Association/American National Electrical Code, National Electric Safety Code or other requirements that may be in force at the time work is begun on such installation. All wiring and apparatus beyond the delivery point shall be the property of or leased by Buyer, and Buyer shall at all times be responsible for the installation and proper maintenance of the same. Seller shall have no obligation to inspect Buyer's electrical facilities. Prior to service being established to a facility located within the jurisdiction of an inspecting authority, such as a city or county government, Buyer must arrange for such authority to inspect and approve the facility to assure compliance with the above-mentioned codes, as well as codes or ordinances promulgated by appropriate governmental authorities. All changes in wiring or repairs, involving modifications, must also be inspected and approved by such inspecting authority. Buyer shall deliver evidence of all such approvals to Seller before the commencement of service. Seller has the right to refuse or terminate service to any Buyer facility whenever Seller becomes aware that such facility is not in compliance with the above codes. Service conductors must extend at least 18 inches outside of the building in order to facilitate connections of Seller-owned conductors. The service entrance conductors (between the meter socket and the point of Attachment) are installed by and at the expense of Buyer, subject to some differences in underground distribution. Where service is supplied directly from a substation, Buyer's service conductors will extend to Seller's substation bus. In no event shall Seller's facilities extend beyond the metering point on Buyer's facilities.
3. Buyer shall provide to Seller, free of expense to Seller, a suitable site, including a concrete pad, for the transformer or transformers, meter devices and other appliances of Seller necessary for providing service.
4. All meter devices for measuring usage of electrical energy and all meter sockets and/or all other metering equipment necessary for proper metering of such consumption will be furnished by and will remain the property of Seller. Access to the meter devices for reading, inspection, repair or other purposes will be furnished to authorized agents of Seller at all reasonable hours. Service will be furnished only at the voltage described in Buyer's contract with Seller. In the event the wiring or metering equipment on Buyer's premises is altered or changed in any way so as to cause the meter or mechanical device for measuring the usage to give false registration or to fail to register the power consumed, Seller may discontinue the involved service. If unauthorized use of service is discovered, the cost will be billed to Buyer for an estimate of the electricity used, the cost of inspection, investigation, reconnection, and cost of repair to Seller's facilities, all of which will be paid before the restoration of service.

5. If deemed necessary by Seller or Buyer, Buyer shall provide suitable equipment on its lines adequately to protect Seller's equipment from lightning discharges or other difficulties which may originate on Buyer's circuits.
6. Buyer shall notify Seller promptly of any defect in service or any trouble or accident to the electric supply.
7. Buyer shall not use electric power in such a manner as to cause unusual voltage fluctuation, harmonically-related disturbances, or other disturbances on Seller's communications, transmission or distribution system. In case of a violation of this rule, service may be discontinued.
8. The service connection, transformers, meters, devices and appliances supplied by Seller for Buyer have a definite capacity and no major additions to the equipment or load connected thereto will be allowed except upon written permission by Seller. Failure to obtain such written permission shall render Buyer liable for any damage to Seller's equipment or system. If Buyer installs standby generation facilities or other power sources, Seller shall approve the design solely to insure that Buyer's system will prevent the unauthorized interconnection of Buyer's system to Seller's system.
9. If the wiring, fixtures or appliances in Buyer's premises are found by Seller's employees, agents or contractors to be defective, such that they may cause damage to the property of Seller, Seller may discontinue service until such time as the defect is remedied by Buyer.
10. Buyer agrees to grant to Seller in form acceptable to Seller such unimpeded easements or other rights of access to Buyer's premises as are adequate, in Seller's sole and absolute judgment, to permit Seller to supply service to Buyer and to enforce Seller's rights and perform Seller's obligations under Seller's contract with Buyer. In particular, Seller's authorized employees, agents and contractors shall have unimpeded access to the premises of Buyer at all reasonable times for the purpose of reading meters and disconnecting service, and for installing, testing, inspecting, repairing, removing or changing any or all equipment belonging to Seller.
11. All wiring and apparatus on Buyer's side of a delivery point shall be:
 - (a) furnished, installed and maintained at the expense of Buyer,
 - (b) owned or leased by Buyer,
 - (c) operated and controlled by or at the expense of Buyer, and
 - (d) the sole responsibility of Buyer; provided, however, that nothing hereunder shall transfer title to Buyer of any wiring or apparatus leased to Buyer by Seller under separate agreement.
12. Changes in location of a delivery point(s), meter(s) or connection(s) made for the accommodation of Buyer must be acceptable to Seller, in its sole and absolute discretion, and shall be at the expense of Buyer.
13. Seller shall have the right, but not the duty, to inspect any wiring and apparatus before service is introduced and at any later time. Seller may refuse to connect and may elect to disconnect if, in its sole and absolute judgment, Buyer's installation, including wiring and apparatus, is defective or does not comply with such reasonable requirements as may be necessary for safety, or is in violation of Seller's standard requirements. Such inspection or the failure to inspect, or failure to

refuse to connect or to elect to disconnect, however, shall not render Seller liable or responsible for any loss or damage resulting from (a) defects in the wiring and apparatus, (b) non-compliance with such reasonable requirements as may be necessary for safety, (c) violation of or non-compliance with Seller's standard requirements, (d) violation of these terms and conditions or (e) accidents which may occur upon the premises of Buyer.

14. Seller may refuse to connect and may elect to disconnect if, in its sole and absolute judgment, Buyer's equipment or use thereof might adversely affect Seller's equipment or system, or Seller's service to other customers.
15. In all cases electricity shall be delivered initially to Buyer at the point(s) of delivery by or under the supervision of a representative of Seller.
16. Seller shall keep in repair and maintain its own property installed on the premises of Buyer in connection with electric service provided by Seller to Buyer; provided, however, that nothing hereunder shall release Buyer of any obligation of Buyer to maintain and repair any property leased by Seller to Buyer.
17. Buyer shall be responsible for safekeeping of Seller's property while such property is located on Buyer's premises. In event of injury to or destruction of any such property, Buyer shall pay the cost of repair and replacement. Buyer shall not permit any person, except an employee, agent or contractor of Seller having a standard badge of Seller or other appropriate identification, to break any seals on, or to do any work on, any meter or other equipment of Seller located on Buyer's premises.
18. All equipment supplied by Seller shall remain its exclusive property and Seller shall have the right to remove the same from the premises of Buyer at any time after the termination of service.
19. The measurement of electric service shall be by meter(s) furnished and installed by Seller. Seller will select the type and make of metering equipment and may from time to time change or alter the equipment, Seller's sole obligation being to supply meter(s) that will accurately and adequately furnish records for billing purposes.
20. Seller shall have the right, at its option and its own expense, to place demand meters, special meters or other instruments on the premises of Buyer for the purpose of determining the adequacy of Seller's service or for making tests of all or any part of Buyer's load.
21. Seller will read its meters each calendar month and will render invoices for electricity used based upon the time interval between meter readings.
22. Seller may estimate the amount of service supplied to premises where access to the meter is not available or to installations at remote locations, for such number of months as the type of installation, normal regularity of usage or other circumstances may warrant, and Seller shall render invoices based on such estimates and so marked. Meter readings will be secured from time to time and invoices will be adjusted when they disclose that the estimate failed to approximate the actual usage.
23. Seller may, upon request by Buyer, make tests to supply special information regarding Buyer's use of service, provided that the cost of such special tests shall be paid by Buyer.

24. If a due date for an invoice falls on a Saturday, Sunday, bank holiday or any other day when the office of Seller which regularly receives payments is not open, the due date shall be extended to the next business day.
25. When interest is applicable, the amount of interest to be added to the unpaid balance shall be calculated by multiplying the unpaid past due balance, including any previous unpaid interest charges, by an interest rate of one and one-half percent (1 1/2%) per month; provided, however, that in the event the interest rate so calculated and applied exceeds the applicable maximum lawful rate of interest applicable to Buyer, then such maximum lawful rate shall apply.
26. When Buyer has an unpaid balance which includes interest charges, any payment received by Seller will be applied first to the interest charge and then to the remainder of the unpaid balance.
27. If a check received in payment of Buyer's account is returned to Seller unpaid by Buyer's bank and cannot be redeposited by Seller for payment on the second attempt, a \$30.00 charge for the returned check will be added to Buyer's account.
28. Seller may discontinue service on reasonable notice if entry to its meter or meters is refused, if access thereto is obstructed or hazardous, or if services are taken without the knowledge or approval of Seller. Seller may discontinue service without notice for abuse, fraud, or tampering with the meters, connections or other equipment of Seller.
29. If service is discontinued on account of the act of Buyer, Buyer shall pay a reconnection charge for restoration of service. The reconnection charge shall be: (a) \$100.00 per account where termination was effected by shutting off at the meter location or by cutting taps, or (b) actual cost where termination was effected by excavation or removing service connection(s). In no event shall service be restored unless in Seller's sole and absolute discretion the reason for discontinuance has been corrected to Seller's satisfaction.
30. The billing period shall commence on the first day of each calendar month and shall end on the last day of each calendar month during the term of Buyer's contract with Seller.
31. Equipment beyond the delivery point(s) shall be supplied, maintained and operated by Buyer so as to maintain standard power factor values, based on registered kilowatt demands, as follows:

Registered Demands	Standard Power Factor
0 kW to 185 kW	80%
186 kW to 2,500 kW	90%
Over 2,500 kW	95%

Whenever the measured power factor of Buyer is less than the prescribed standard, measured demand shall be increased by the ratio of the standard power factor to the measured power factor. The demand thus determined shall be used as a basis for calculating Buyer's billing demand for purposes of any rate under which a billing demand and/or a capacity charge is applicable.

32. Equipment beyond the delivery point(s) shall be subject at all times to the inspection, testing and approval of Seller insofar as the same may in any way affect the safe, economical and successful operation of the electric system of Seller and no change which might affect such operation shall be made without Seller's approval.

33. Seller, by agreeing to provide electric service to Buyer and by supplying such service, does not assume any obligation or responsibility as to the condition of Buyer's equipment or apparatus.
34. Buyer shall not resell electricity purchased from the Seller unless authorized to do so in writing by Seller.

**UNITED STATES STEEL CORPORATION
TERMS AND CONDITIONS FOR
NATURAL GAS SERVICE**

1. Buyer agrees to grant to Seller in form acceptable to Seller such unimpeded easements or other rights of access to Buyer's premises as are adequate, in Seller's sole and absolute judgment, to permit Seller to supply service to Buyer and to enforce Seller's rights and perform Seller's obligations under Seller's Natural Gas Sales and Purchase Agreement with Buyer ("Agreement"). In particular, Seller's authorized employees, agents and contractors shall have unimpeded access to the premises of Buyer at all reasonable times for the purpose of reading meters, connecting and disconnecting service, and for installing, testing, inspecting, repairing, removing or changing any or all equipment belonging to Seller.
2. The piping and other facilities on Buyer's side of a delivery point shall be:
 - (a) furnished, installed and maintained at the expense of Buyer,
 - (b) owned or leased by Buyer,
 - (c) operated and controlled by or at the expense of Buyer, and
 - (d) the sole responsibility of Buyer; provided, however, that nothing hereunder shall transfer title to Buyer of any property leased to Buyer by Seller under separate agreement.
3. Changes in location of a delivery point, meter or connection made for the accommodation of Buyer must be acceptable to Seller, in its reasonable discretion, and shall be at the expense of Buyer.
4. Seller shall have the right, but not the duty, to inspect any installation before service is introduced and at any later time. Seller may refuse to connect and may elect to disconnect if, in its sole and absolute judgment, Buyer's installation, including piping and appliances, is defective or does not comply with such reasonable requirements as may be necessary for safety, or is in violation of Seller's standard requirements. Such inspection or the failure to inspect, or failure to refuse to connect or to elect to disconnect, however, shall not render Seller liable or responsible for any loss or damage resulting from (a) defects in the installation, piping, or appliances, (b) non-compliance with such reasonable requirements as may be necessary for safety, (c) violation of or non-compliance with Seller's standard requirements, (d) violation of these terms and conditions or (e) accidents which may occur upon the premises of Buyer.
5. Seller may refuse to connect and may elect to disconnect if, in its sole and absolute judgment, Buyer's equipment or use thereof might adversely affect the equipment of Seller or Seller's service to other customers.
6. In all cases gas shall be delivered initially to Buyer at a point of delivery by or under the supervision of a representative of Seller.
7. Seller shall keep in repair and maintain its own property installed on the premises of Buyer in connection with gas service provided by Seller to Buyer; provided, however, that nothing hereunder shall release Buyer of any obligation of Buyer to maintain and repair any property leased by Seller to Buyer.
8. Buyer shall be responsible for safekeeping of the Seller's property while such property is located on Buyer's premises. In event of injury to or destruction of any such property, Buyer shall pay the cost of repair and replacement. Buyer shall not permit any person, except an employee, agent or

contractor of Seller having a standard badge of Seller or other appropriate identification, to break any seals or to do any work on any meter, supply side pipe or other equipment of Seller located on Buyer's premises.

9. In the event of tampering or other interference with Seller's meter or other property, Buyer shall pay such amount as Seller may estimate is due for gas used but not registered on Seller's meter. Buyer also shall pay the cost of any repairs, replacements, inspections, investigations and protective installations.
10. All equipment supplied by Seller shall remain its exclusive property and Seller shall have the right to remove the same from the premises of Buyer at any time after the termination of service.
11. Buyer shall notify Seller immediately in the event of any leak, defect, trouble or accident affecting the supply of gas to Buyer at any point of delivery.
12. Gas service shall not be used by Buyer in such a manner as to cause unusual fluctuations or disturbances in Seller's supply system. In the case of violation of this provision, Seller may discontinue service or require Buyer to modify its installation and/or equip it with approved controlling devices.
13. Failure to give notice of additions to or changes in Buyer's load or location shall render Buyer liable for any damage to the regulators, meters, or other equipment of Seller caused by the addition or change.
14. Seller shall have the right, at its option and its own expense, to place demand meter, pressure gauges, special meters, or other instruments, on the premises of Buyer for the purpose of determining the adequacy of Seller's service or for making tests of all or any part of Buyer's load.
15. Seller will read its meters each calendar month and will render invoices for gas used based upon the time interval between meter readings.
16. Seller may estimate the amount of gas supplied to premises where access to the meter is not available or to installations at remote locations, for such number of months as the type of installation, normal regularity of usage or other circumstances may warrant, and Seller shall render invoices based on such estimates and so marked. Meter readings will be secured from time to time and invoices will be adjusted when they disclose that the estimate failed to approximate the actual usage.
17. The quantities of gas used may be corrected to standard conditions, namely 60° Fahrenheit temperature and 30 inches of mercury barometric pressure. All methods employed in correcting measurements of gas volume to said standard conditions shall be in accordance with established industry standards.
18. Seller may, upon request by Buyer, make tests or readings to supply special information regarding Buyer's use of gas, provided that the cost of such special tests or readings shall be paid by Buyer.
19. If a due date for an invoice falls on a Saturday, Sunday, bank holiday or any other day when the office of Seller which regularly receives payments is not open, the due date shall be extended to the next business day.

20. When interest is applicable, the amount of interest to be added to the unpaid balance shall be calculated by multiplying the unpaid past due balance, including any previous unpaid interest charges, by an interest rate of one and one-half percent (1/2%) per month; provided, however, that in the event the interest rate so calculated and applied exceeds the maximum lawful rate of interest applicable to Buyer, then such maximum lawful rate shall apply.
21. When Buyer has an unpaid balance which includes interest charges, any payment received by Seller will be applied first to interest and then to the principal of the unpaid balance.
22. If a check received in payment of Buyer's account is returned to Seller unpaid by Buyer's bank and cannot be redeposited by Seller for payment on the second attempt, a \$30.00 charge for the returned check will be added to Buyer's account.
23. Seller may discontinue service on reasonable notice if entry to its meter or meters is refused, if access thereto is obstructed or hazardous, or if gas is taken without the knowledge or approval of Seller. Seller may discontinue service without notice for abuse, fraud, or tampering with the meters, connections or other equipment of Seller.
24. Seller may discontinue service without notice if, in Seller's sole and absolute judgment, Buyer's installation has become hazardous or defective or if Buyer's equipment or use thereof might adversely affect Seller's equipment or system, or Seller's service to other customers.
25. If service is discontinued on account of Buyer, Buyer shall pay a reconnection charge for restoration of service. The reconnection charge shall be: (a) \$100.00 per meter where termination was effected by shutting off at the meter location or at the curb box or (b) actual cost where termination was effected by excavation or removing service connection(s). In no event shall service be restored unless in Seller's sole and absolute discretion the reason for discontinuance has been corrected to Seller's satisfaction.
26. Buyer shall not resell gas purchased from Seller unless authorized to do so in writing by Seller.
27. The billing period shall commence on the first day of each calendar month and shall end on the last day of each calendar month during the term of Buyer's contract with Seller.

EXHIBIT E

cc D. McCarthy



Philadelphia Building and Construction Trades Council — AFL-CIO

2791 SOUTHAMPTON ROAD, SUITE 100 • PHILADELPHIA, PA 19154 • (215) 677-8500 • FAX (215) 677-7918

PATRICK B. GILLESPIE
Business Manager

PATRICK J. EIDING
Secretary-Treasurer

EDWARD C. KEENAN
President

June 7, 2004

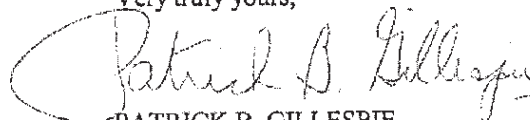
Garrett F. Hurley, President
USS Real Estate
600 Grant Street
Pittsburgh, PA 15219-2800

Dear Mr. Hurley:

Attached please find your fully executed copy of the Agreement between USS Real Estate and the Philadelphia Building Trades Council.

If you have any questions or need additional information, please do not hesitate to call.

Very truly yours,


PATRICK B. GILLESPIE
Business Manager

PBG/en
encl

opeiu #32
afl-cio

May-17-04 12:12

From-BLDG TRADES COUNCIL

4215-577-7918

T-350 P.02/03 F-765

4215 577 7918

AGREEMENT

This Agreement is made this 18th day of May 2004 by and between USS Real Estate, a division of United States Steel Corporation ("USS Real Estate") and the Building and Construction Trades Council of Philadelphia and Vicinity ("Trades Council") and sets forth the full and final understanding of the parties concerning USS Real Estate's obligations to the Trades Council with respect to the disposition of premises located within the Fairless Industrial Park operated by USS Real Estate.

WHEREAS, USS Real Estate desires that the Fairless Industrial Park be designated and approved as a Keystone Opportunity Improvement Zone, and

WHEREAS, the Trades Council believes that the designation and approval of the Fairless Industrial Park as a Keystone Opportunity Improvement Zone is beneficial to its affiliated organizations and their respective members, as well as to the community at large,

NOW, THEREFORE, the parties agree as follows:

1. The Trades Council, including all of its affiliated International Unions and their Local Unions, will use its best efforts to support and assist USS Real Estate in its endeavors to have the Fairless Industrial Park designated and approved as a Keystone Opportunity Improvement Zone, and will use its best efforts to assist USS Real Estate in marketing the property within the Fairless Industrial Park.

2. Contingent upon the Fairless Industrial Park first being properly designated and approved as a Keystone Opportunity Improvement Zone by the Commonwealth of Pennsylvania, Bucks County, Falls Township and the Pennsbury School District, USS Real Estate will include the following clause in future leases and contracts for sale of premises located within the Fairless Industrial Park operated by USS Real Estate:

"Except where expressly prohibited by law, the Tenant (Buyer) shall enter into a Project Labor Agreement with the Building and Construction Trades Council of Philadelphia and Vicinity in connection with construction work performed by or for Tenant (Buyer) on the Leased Premises (Premises). (The provisions of this Section shall survive delivery of the deed to Buyer.)"

3. Any and all ^{new} construction work performed by USS Real Estate at the Fairless Industrial Park shall be performed by a contractor who is signatory with the

Received Time May 17, 1:50PM

May-17-04 12:12

From-BLGG TRADES COUNCIL

+215-677-7918

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+215 677 7918

Philadelphia Building & Construction Trades Council or one of the Council's affiliated organizations.

4. The obligation undertaken by USS Real Estate pursuant to this Agreement is limited to that of including the clause referenced in Paragraph 2 in future leases and contracts for sale of premises within the Fairless Industrial Park operated by USS Real Estate and that of performing construction work in accordance with Paragraph 3. The Project Labor Agreements contemplated by Paragraph 2 are not themselves applicable to USS Real Estate. USS Real Estate makes no warranties or representations as to the enforceability, validity, legal effect or interpretation of any such Project Labor Agreements, such matters being sole and exclusive responsibility of the parties thereto.

5. Except as provided in Paragraph 2, the Trades Council understands and agrees that there shall be no third-party beneficiaries to the leases and/or contracts for sale of premises located within the Fairless Industrial Park operated by USS Real Estate referenced in Paragraph 2, and that such leases and/or contracts for sale will not be intended to, shall not, confer upon the Trades Council or any other person, except the parties thereto, any rights or remedies thereunder. This Paragraph shall not preclude the Trades Council or one of its affiliates from bringing an action to enforce a clause in a lease or contract, as set forth in Paragraph 2, requiring a tenant or buyer to enter into a Project Labor Agreement.

6. This Agreement contains the entire and only agreement between USS Real Estate and the Building and Construction Trades Council of Philadelphia and Vicinity relating to the subject matter hereof, supersedes any and all agreements and amendments thereto which may have been heretofore negotiated or entered into between them. There are no further understandings, written or oral, between the parties.

IN WITNESS WHEREOF, USS Real Estate, a division of United States Steel Corporation and the Building and Construction Trades Council of Philadelphia and Vicinity have caused this Agreement to be duly executed the day and year first above written by their duly authorized representatives.

USS Real Estate, a division of
United States Steel Corporation

By: GF Hurley

Name: GF Hurley

Title: President
USS Real Estate

Building and Construction Trades Council
of Philadelphia and Vicinity

By: Robert B. Gillespie

Name: Robert B. Gillespie

Title: Bus. Manager
Phila. Building & Construction
Trades Council

Received Time May 17, 11:50PM

EXHIBIT "F"

ESCROW AGREEMENT

THIS ESCROW AGREEMENT made as of the ____ day of September, 2007 ("Escrow Agreement") between and among **UNITED STATES STEEL CORPORATION**, a Delaware Corporation, having an address at 600 Grant Street, Pittsburgh, PA 15219 ("Seller"), and **SAMAX ENTERPRISES INC.**, a New York corporation, and **YOOKEL INC.**, a New York corporations having an address at 29 Riverside Avenue, Building 2, Newark, NJ 07104-4237 ("Buyer") and Edward Murphy ("Escrow Agent") (individually a "Party" and collectively the "Parties").

RECITALS

WHEREAS, Seller and Buyer have entered into a certain Purchase and Sale Agreement dated the ____ day of August, 2007 relating to certain premises located within the Keystone Industrial Port Complex in the township of Falls, Bucks County, Pennsylvania, 19030, and better known as 1001 New Ford Mill Road, Morrisville, PA (the "Purchase Agreement"); and

WHEREAS, Seller and Buyer have agreed to deposit certain funds with Escrow Agent to be held by Escrow Agent on the terms and conditions set forth herein, and Escrow Agent is willing to hold the deposit on such terms and conditions;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the Parties hereto agree as follows:

1. Concurrently with the execution and delivery of this Escrow Agreement, Buyer has deposited with the Escrow Agent the sum of Three Hundred Thousand and 00/100 Dollars (\$300,000.00) (the "Escrow Amount"), which Escrow Agent shall hold in an interest-bearing trust account at Sovereign Bank until authorized to release said Escrow Amount as set forth in this Escrow Agreement. Wiring instructions are as follows:

Bank Name:	Sovereign Bank
Address:	3 Terry Drive, Suite 100 Newtown, PA 18940
ABA Number:	
Contact at Bank:	
Name on Account:	Edward F. Murphy, Esquire Escrow Agent for SAMAX ENTERPRISES and YOOKEL INC.
Master Account Number:	
Account to be credited:	

The Parties further acknowledge and agree that due to the large number of Escrow Agent's clients and the resulting aggregate cash balances in Escrow Agent's trust account, Escrow Agent may

derive direct benefits, which shall be deemed part of Escrow Agent's compensation, in addition to any other amount received by Escrow Agent in connection with the transaction referred to herein.

2. Escrow Agent is authorized to release the Escrow Amount, with or without accrued interest, upon receipt of written instructions signed by both Seller and Buyer authorizing disbursement of the Escrow Amount, provided that funds have cleared. Escrow Agent shall deliver the Escrow Amount to the Party designated in the written instructions. Escrow Agent shall disburse such funds immediately after receipt of such written instructions.

3. All interest earned shall be for the benefit of Buyer and shall so be listed on the Escrow Account. The federal tax identification number to be used is that of Buyer which is _____. All such interest shall be paid to Buyer, or otherwise as authorized by Seller and Buyer, when the Escrow Amount is disbursed as provided in this Escrow Agreement.

4. Any instructions or notices to Escrow Agent by either Seller or Buyer shall be in writing, and a copy of the written notice shall be delivered to the other Party by the Party who provided such notice to Escrow Agent.

5. The Parties acknowledge that (a) Escrow Agent is acting solely as a stakeholder at their request and for their convenience, (b) Escrow Agent shall not be deemed to be the agent of either of the Parties, and (c) Escrow Agent shall not be liable to either of the Parties for any act or omission on its part unless taken or suffered in gross negligence or in willful disregard of this Escrow Agreement.

6. Escrow Agent may act upon any instrument or other writing believed by Escrow Agent in good faith to be genuine and to be signed and presented by a proper person. If Buyer is a partnership, the instruction of one of the partners of Buyer shall be sufficient to bind the Buyer and the other partner(s). If Buyer is a corporation, the instruction of one corporate officer shall be sufficient to bind the Buyer. Escrow Agent shall not be liable in connection with the performance of any duties imposed upon Escrow Agent taken or suffered in gross negligence or in willful disregard of this Escrow Agreement. Escrow Agent shall have no duties or responsibilities except those set forth in this Escrow Agreement.

7. All expenses, disbursements and advances, including reasonable attorneys' fees, incurred or made by Escrow Agent in connection with a dispute involving the Escrow Amount and Escrow Agent's obligations hereunder shall be paid by the losing Party.

8. Seller and Buyer shall jointly and severally defend, indemnify and hold Escrow Agent and its officers, agents and employees harmless from and against all costs, claims, and expenses, including reasonable attorneys' fees, incurred in connection with Escrow Agent's duties hereunder, except for actions or omissions taken or suffered by Escrow Agent in gross negligence or in willful disregard of this Escrow Agreement.

9. Seller and Buyer may jointly appoint a successor escrow agent by written notice to Escrow Agent. In such event, Escrow Agent shall deposit the Escrow Amount with the successor escrow agent and, upon such deposit, Escrow Agent shall be relieved and discharged of all further obligations and responsibilities under this Escrow Agreement.

10. Seller and Buyer acknowledge that Escrow Agent is or may be acting as agent for one or more of the Parties in connection with the transaction contemplated by the Purchase Agreement. Seller and Buyer acknowledge that they are aware of the potential for actual or apparent conflict of interest which may arise in connection with such representation and escrow Agent's performance of its duties hereunder. Seller and Buyer hereby waive all rights to object to such conflict of interest, and release Escrow Agent from any liability in connection with such conflict of interest, although not from liability in accordance with paragraphs 5 and 6 above.

11. All notices to Escrow Agent shall be given in writing and delivered either by hand or by overnight courier, postage pre-paid, return receipt requested, and addressed as follows:

Edward Murphy
McBride and Murphy Attorney
301 North Sycamore Street
P.O. Box 1186
Newtown, PA 18940

12. This Escrow Agreement contains the entire agreement among the Parties with respect to the subject matter hereof. This Escrow Agreement may not be amended, supplemented, discharged, and no provision hereof may be modified or waived, except expressly by an instrument in writing signed by all Parties hereto. No waiver of any provision hereof by any Party shall be deemed a continuing waiver of any matter by such Party. In the event of any inconsistency between the terms of this Escrow Agreement and the terms of the Purchase Agreement, the terms of this Escrow Agreement shall prevail.

{REMAINDER OF PAGE INTENTIONALLY LEFT BLANK}

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and sealed, in duplicate originals, by their duly authorized officers as of the day and year first written above.

SAMAX ENTERPRISES INC. and YOOKEL INC. ("BUYER"):

BY: Perry Heschel

UNITED STATES STEEL CORPORATION ("SELLER"):

BY: _____

Edward F. Murphy, Esquire
McBride and Murphy Attorney

ESCROW AGENT:

BY: _____

EXHIBIT "G"
EASEMENT AGREEMENT
(Private Roads/Utility Access)

THIS AGREEMENT IS MADE THIS ____ DAY OF _____, 2007, by and between United States Steel Corporation, a Delaware Corporation having a mailing address at 600 Grant Street, Pittsburgh, Pennsylvania 15219 ("USS") and Samax Enterprises, Inc., a New York corporation and Yookel Inc. a New York corporation ("Grantor"), having a mailing address of 29 Riverside Avenue, Building 2, Newark, NJ 07104-4237.

BACKGROUND

A. USS is the developer and subdivider of the Keystone Industrial Port Complex in Falls Township (the "Township"), Bucks County, Pennsylvania (the "KIPC").

B. Grantor has purchased from USS 14.1 acres and a 177,000 square foot building known as 1001 New Ford Mill Road, Morrisville, PA as shown , and as described by metes and bounds in Exhibit A attached hereto ("Premises"). USS's deed conveying the Premises to Grantor has been delivered and is intended to be forthwith recorded in the Recorder's Office prior to the recording of this Agreement.

AGREEMENT

In consideration of all covenants, terms and conditions herein contained and intending to be legally bound, USS and Grantor hereby agree as follows:

1. Grant of Easement.

(a) Grantor hereby grants, bargains, sells, aliens, conveys and confirms to USS, its successors and assigns, a non-exclusive perpetual easement in, to, upon and over the rights of way of the Premises, to have and to hold such easement forever, subject to paragraph 3 below. This easement is given for the purpose of providing access to the Premises to USS or to utility companies to maintain and/or repair utility infrastructure or to obtain utility services from such companies and to allow such companies the right to construct, install, repair, maintain and replace such utility lines, pipes, conduits, poles, wires and related facilities as are necessary to provide such utility services. The rights granted herein shall be appurtenant to the Premises and may be used by the Grantor for all purposes for which public ways in the Township are used by utility companies.

(b) If requested by USS, Grantor, its successors or assigns, in substitution of the aforesaid easement rights of USS, shall grant to such utility companies as requested by USS such easements as are reasonably necessary to permit such utility company to deliver electric service or other utilities to the Property in the right of way of streets or other property reasonably available to USS. The utility line rights of way made available to the utility companies by Grantor pursuant to these provisions will be located over the most direct route reasonably available through, over and/or under land owned or controlled by Grantor.

2. Terms and Conditions of Easement. The easement granted in paragraph 1 above (the "Easement") is subject to the following terms, reservations and conditions:

A. Area of Use. The Easement extends to the use of all private roads , now or hereafter existing, paved or unpaved, that are necessary or desirable for vehicular or pedestrian access to the Premises to maintain, repair, supply or initiate utilities to the Premises, referred to herein as the "Easement Area".

B. Use. The Easement Area may be used by USS, its affiliated parties, its employees, agents, tenants, invitees and contractors.

C. Maintenance and Repair. Grantor shall keep and maintain the private roads, rights of way, or easements in good, safe and operable condition and repair, adequate to carry motor vehicles, including heavy truck traffic.

D. Reservation. Grantor excepts and reserves unto Grantor, its successors and assigns, the right and privilege, exercisable on a continuing basis from time to time, to maintain, repair, alter or substitute the private roads, rights of way, easements subject to this Agreement as Grantor may deem necessary, appropriate or advisable, provided that such activities do not unreasonably interfere with the Grantor's use and enjoyment of the Premises or the Easement Area for the purposes stated herein.

3. Successors and Assigns. The benefits and burdens hereof shall be binding upon and shall inure to the benefit of USS and the Grantor and their respective successors, assigns and legal representatives. The Easement granted herein shall run with the title to the Premises and the KIPC.

DATED:

Attest:

USS Real Estate

A DIVISION OF United States Steel Corporation,
a Delaware Corporation

By: _____
Name:
Title:

By: _____
Name:
Title: President

[Corporate seal]

GRANTOR:

Attest:

Samax Enterprises Inc. and Yookel Inc.

By: _____
Name:
Title:

By: Perry Lee Chen
Name:
Title: PC

COMMONWEALTH OF PENNSYLVANIA)
) SS:

COUNTY OF _____

On this ___ day of August 2007, before me, the undersigned, a Notary Public in and For the Commonwealth of Pennsylvania, duly commissioned and sworn, personally appeared _____ who acknowledges himself to be the _____ of USS Corporation, and that he, as such _____ being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the said corporation by himself as _____.

WITNESS my hand and seal hereto affixed hereto the day and year written above.

Notary Public

My commission expires: _____

COMMONWEALTH OF)
) SS:
COUNTY OF _____)

On this _____ day of _____, 2007, before me, the undersigned, a Notary Public in and for the Commonwealth of Pennsylvania, duly commissioned and sworn, personally appeared _____ who acknowledged to be the _____ of _____, and that he as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the said corporation by himself as _____.

WITNESS my hand and seal hereto affixed hereto the day and year written above

Notary Public

My commission expires _____

EXHIBIT I

INSURANCE

Buyer agrees that before it or any of its consultants/contractors visit the Premises, Buyer shall procure and maintain, and shall require any of its consultants/contractors to procure and maintain insurance policies in accordance with the terms and provisions outlined in Exhibit "T" attached hereto and incorporated herein.

1. **Minimum Scope of Insurance** -- Coverage shall be at least as broad as the following:

A. **Commercial General Liability Insurance**: Shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from Premises, operations, independent contractors, products-completed operations, personal injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). If a 1973 edition ISO form must be used by the insurer, the broad form comprehensive general liability (BFCGL) endorsement shall be included. Additionally, the policy shall not contain a sunset provision, commutation clause or any other provision which would prohibit the reporting of a claim and the subsequent defense and indemnity that would normally be provided by the policy. The policy of insurance shall contain or be endorsed to include the following:

- (i) Premises/Operations;
- (ii) Products/Completed Operations;
- (iii) Contractual;
- (iv) Independent Contractors;
- (v) Broad form property damage;
- (vi) Personal and Advertising Injury;
- (vii) Separation of Insureds (severability of interest);
- (viii) The policy shall be endorsed using ISO form CG 20 10 11 85 (or a substitute form providing equivalent coverage) so as to include United States Steel Corporation (hereinafter "USS"), and its affiliates, including all units, divisions and subsidiaries as Additional Insureds on a Primary and Non-contributory basis. The coverage shall contain no special limitations on the scope of protection afforded to said Additional Insured.
- (ix) Waiver of subrogation shall be provided to the benefit of all Additional Insureds, as aforesaid.
- (x) No XCU (explosion, collapse, underground) exclusion.
- (xi) For any claims related herein, the Buyer's and/or its Contractor's insurance shall be primary and non-contributory respecting the aforesaid Additional Insureds. Any insurance or self-insurance maintained by USS shall be in

excess of the Buyer's and/or Contractor's insurance and shall not contribute with it.

- (xii) The policy shall not contain any provision, definition, or endorsement which would serve to eliminate third-party action over claims.
- (xiii) Self-funded, or other non-risk transfer insurance mechanism are not acceptable to USS. If the Buyer has such a program, full disclosure must be made to USS prior to any consideration being given.

B. Automobile Liability Insurance: As specified by ISO form number CA 0001, Symbol I (any auto), with an MCS 90 endorsement and a CA 99 48 endorsement attached if hazardous materials or waste are to be transported. This policy shall be endorsed to include USS, its subsidiaries and/or affiliates as Additional Insureds, and to include waiver of subrogation to the benefit of all Additional Insureds, as aforesaid.

C. Workers' Compensation Insurance: As required by the State or Commonwealth in which work is being done, and in accordance with any applicable Federal laws, including Employer's Liability Insurance and/or Stop Gap Liability coverage as per below limits. Where not otherwise prohibited by law, this policy shall be endorsed to include waiver of subrogation to the benefit of USS, its subsidiaries, and/or affiliates.

D. Employer's Liability and/or Stop Gap Liability Coverage: Coverages per accident, disease-policy limit, and disease each employee.

E. Errors and Omissions Professional Liability Insurance: Coverage should be for a professional error, act or omission arising out of the Contractor's performance of work hereunder. The policy form may not exclude coverage for Bodily Injury, Property Damage, claims arising out of laboratory analysis, pollution or the operations of a treatment facility, to the extent these items are applicable under the scope of work hereunder. This policy shall be endorsed to include waiver of subrogation to the benefit of USS, its subsidiaries, and/or affiliates. If coverage is on a claims-made form, Contractor shall maintain continuous coverage or exercise an extended discovery period for a period of no less than five (5) years from the time that the work hereunder has been completed.

F. Environmental Impairment Insurance: Covering damage to the environment, both sudden and non-sudden, caused by the emission, disposal, release, seepage, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gases, waste materials or other irritants, contaminants or pollutants, into or upon land, the atmosphere or any water course or body of water; or the generation of odor, noises, vibrations, light, electricity, radiation, changes in temperature, or any other sensory phenomena. Such insurance shall contain or be endorsed to include:

- (i) Property damage, including loss of use, injury to or destruction of property;
- (ii) Cleanup costs which shall include operations designed to analyze, monitor, remove, remedy, neutralize, or clean up any released or escaped substance which has caused environmental impairment or could cause environmental impairment if not removed, neutralized or cleaned up.

- (iii) Personal injury, which shall include bodily injury, sickness, disease, mental anguish, shock or disability sustained by any person, including death resulting therefrom.
- (iv) USS, its subsidiaries and/or affiliates as Additional Insureds, on a primary and non-contributory basis.
- (v) Waiver of Subrogation in favor of USS, its subsidiaries and/or affiliates.

If the Environmental Impairment Insurance is on a claims-made form, Buyer and its Contractor(s) shall maintain continuous coverage or exercise on an extended discovery period for a period of no less than five (5) years from the time that the work hereunder has been completed.

2. **Minimum Limits of Insurance** -- Buyer and its Contractor(s) shall maintain limits *no less than*:

A. **Commercial General Liability**: Including Umbrella Liability Insurance, if necessary, limits shall be not less than \$2,000,000 each occurrence for bodily injury and property damage; \$2,000,000 each occurrence and aggregate for products and completed operations; \$4,000,000 general aggregate. The limits and coverage requirements may be revised at the option of USS, except if parties agree otherwise.

B. **Automobile Liability Insurance**: Including Umbrella Liability Insurance, if necessary, limits shall be not less than \$2,000,000 per accident for bodily injury and property damage, \$5,000,000 if hazardous materials or substances are to be transported.

C. **Workers' Compensation**: As required by the State or Commonwealth in which the work will be performed, and as required by any applicable Federal laws.

D. **Employer's Liability and/or Stop Gap Liability Coverage**: \$1,000,000 per accident, \$1,000,000 disease-policy limit, and \$1,000,000 disease each employee. (May include Umbrella coverage.)

E. **Errors and Omissions Professional Liability Insurance**: \$2,000,000 per loss; \$4,000,000 annual aggregate limit.

F. **Environmental Impairment Insurance**: \$5,000,000 combined single limit per loss. The limits and coverage requirements may be revised at the option of USS, except if parties agree otherwise.

3. **Deductibles and Self-Insured Retentions** -- All insurance coverage carried by Buyer and its Contractor(s) shall extend to and protect USS, its subsidiaries and/or affiliates to the full amount of such coverage, and all deductibles and/or self-insured retentions (if any), including those relating to defense costs, are the sole responsibility of Buyer and its Contractor(s).

4. **Rating of Insurer** -- The Buyer and its Contractor(s) will only use insurance companies acceptable to USS and authorized to do business in the state or area in which the work hereunder is to be performed. Insurers must have a minimum rating of a A-, Class VII as evaluated by the most current A.M.

Best rating guide. If the insurer has a rating less than an A-, Class VII, the Contractor must receive specific written approval from USS prior to proceeding.

5. **Other Insurance Provisions**

A. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by United States first class certified mail, return receipt requested, has been given to USS.

B. These insurance provisions are intended to be a separate and distinct obligation on the part of the Buyer. Therefore, these provisions shall be enforceable and Buyer and/or Contractor(s) shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

C. The above-described insurance coverage to be provided by Buyer and/or its Contractor(s) hereunder will extend coverage to all work or services performed hereunder.

D. The obligation of the Buyer and its Contractor(s) to provide the insurance herein above specified shall not limit in any way the liability or obligations assumed by the Buyer and its Contractor(s) hereunder.

E. In the event Buyer and its Contractor(s), or its insurance carrier defaults on any obligations hereunder, Buyer and its Contractor(s) agree that they will be liable for all reasonable expenses and attorneys' fees incurred by USS to enforce the provisions hereunder.

6. **Evidence of Coverage**

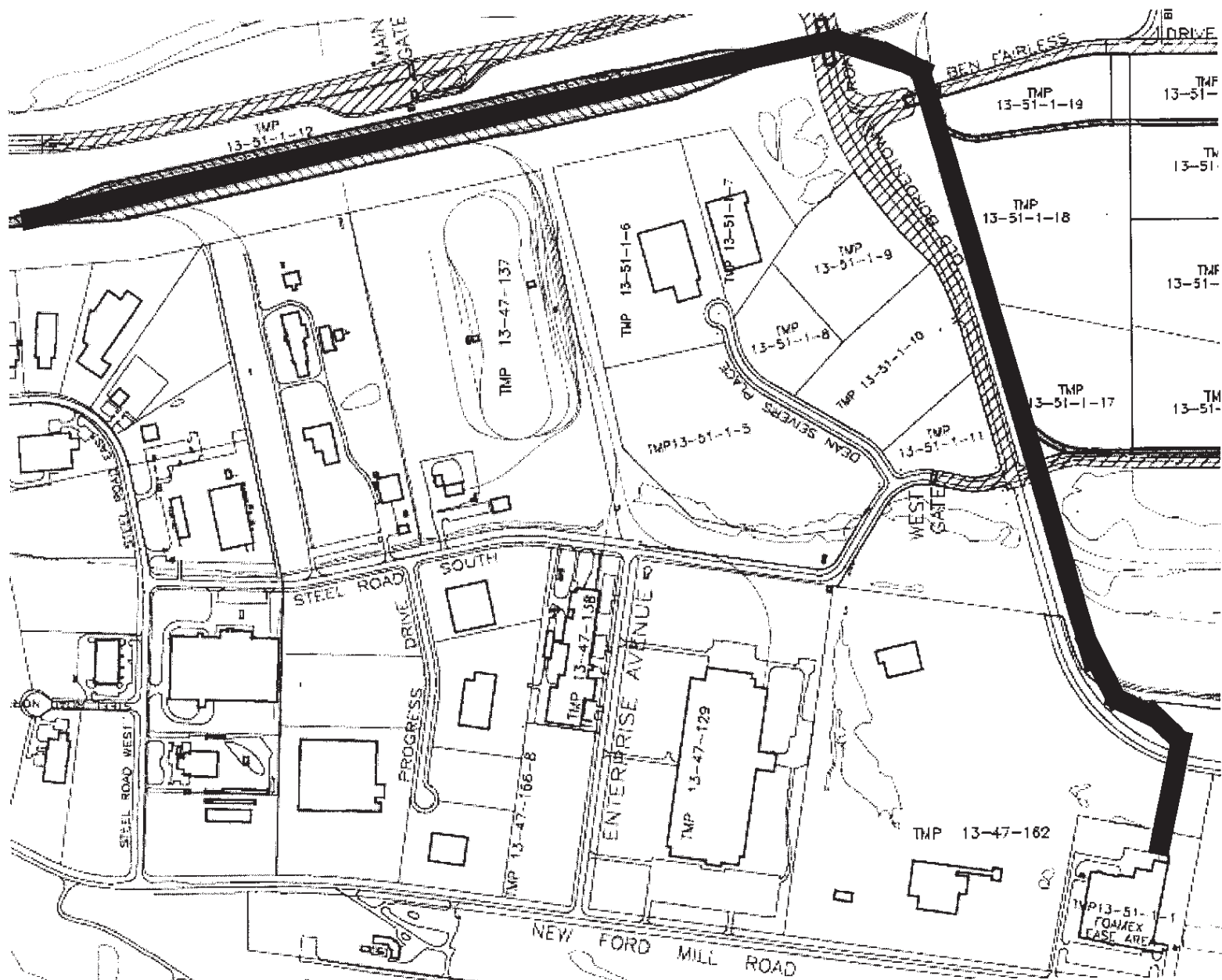
A. Buyer and its Contractor(s) shall furnish USS with copies of the endorsements effecting the coverage required by this specification. Additionally, *prior to the commencement of any work or services on USS's Premises*, Buyer and its Contractor(s) and all subcontractors, if any, shall furnish to USS satisfactory Certificates of Insurance evidencing full compliance with the requirements herein. The Certificates of Insurance must show that the required insurance is in force, the amount of the carrier's liability thereunder, and must further provide that USS will be given sixty (60) days advance written notice of any cancellation of coverage or deletion of the certificate holder herein as an Additional Insured under the policies.

B. All Certificates of Insurance shall be in form and content acceptable to USS and shall be submitted to USS in a timely manner so as to confirm Buyer and its Contractor(s) full compliance with the stated insurance requirements hereunder.

C. Any failure on the part of USS to pursue or obtain the Certificates of Insurance required hereunder from Buyer and its Contractor(s) and/or the failure of USS to point out any non-compliance of such Certificates of Insurance shall not constitute a waiver of any of the insurance requirements hereunder, nor relieve Buyer or its Contractor(s) of any of its obligations or liabilities hereunder. Moreover, acceptance by USS of insurance submitted by the Buyer and its Contractors does not relieve or decrease in any manner the liability of the Buyer and its Contractor(s) for performance hereunder. The Buyer and its Contractor(s) are responsible for any losses, claims, and/or costs of any kind which their insurance does not cover.

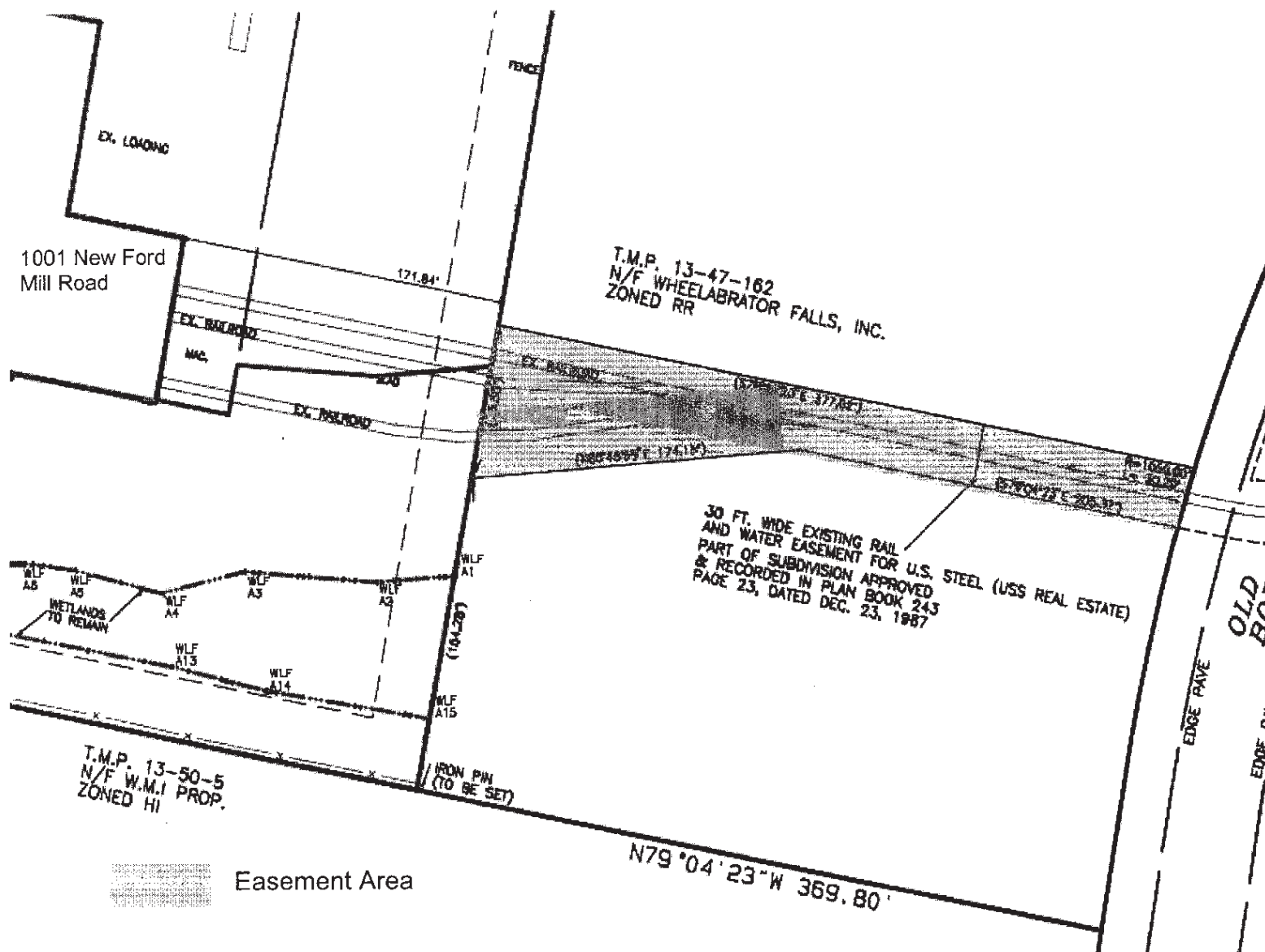
7. Subcontractors -- Contractor(s) shall be responsible to obtain separate certificates from each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

EXHIBIT K



Represents Rail Access

EXHIBIT K1



FIRST AMENDMENT
to
AGREEMENT FOR THE PURCHASE AND SALE
of
REAL ESTATE

THIS FIRST AMENDMENT ("First Amendment") to the Agreement for the Sale and Purchase of Real Estate is made as of the 21st day of December, 2007, between **United States Steel Corporation**, a Delaware corporation, with an address of 600 Grant Street, Pittsburgh, Pennsylvania 15219-2800 ("Seller"), and **Yookel, Inc.**, a New York corporation, with an address of 29 Riverside Avenue, Building 2, Newark, NJ 07104-4237 (hereinafter "Buyer").

RECITALS

WHEREAS, the Seller and Buyer entered into an Agreement for the Sale and Purchase of Real Estate, dated September 19, 2007 ("Agreement"); and

WHEREAS, the Seller and Buyer wish to enter into a First Amendment to the Agreement, modifying, by extension, certain terms of the Agreement, as set forth hereinafter;

NOW, THEREFORE, for and in consideration of the sums and the mutual covenants and conditions hereinafter set forth, the receipt and sufficiency of which are hereby mutually acknowledged, Buyer and Seller hereby agree as follows:

1. **Extend Due Diligence.** The Due Diligence period set forth in Article 6 (A) is hereby extended until December 31, 2007.

2. **Utilities.** Section 1.02(d) of the contract shall be modified to read; "1.02 (d) Buyer is currently connected to Seller's water service. Seller shall have the right to disconnect Buyer at any time from Seller's water service provided Seller reconnects Buyer to a comparable alternate source. Seller will be responsible for 100 % of installation costs of the pipe line from the alternate source to the northwest corner of the properties intersection with New Ford Mill Road (see survey attached as Exhibit Z). The Buyer will be the applicant for all required permits and will pay associated application and permit fees.

3. **Purchaser** The purchaser under the contract shall be reflected as Yookel Inc. and Samax Enterprises Inc. shall be deleted from the contract.

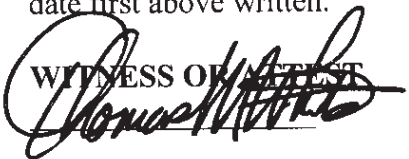
4. **Deed** Section 8(B) of the contract shall be modified to reflect that the changes in the following attached Exhibit .

5. **Closing** Sellers will provide up to a 15 day extension with regard to the closing date through and including January 15, 2008, in the event same becomes necessary.

6. *Effect on Agreement.* In all other respects the terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date first above written.

WITNESS OR ATTEST



WITNESS OR ATTEST



Bernd E. Hefele
Attorney at Law
State of New Jersey

UNITED STATES STEEL CORPORATION

By:

Name:

Title:

Date:


Dennis M. Jones
Regional Manager - USS Real Estate
12/21/07, 2007



YOOKEL, INC.

By:

Name:

Title:

Date:


Samuel Fleischman
President
12/21/07, 2007

**EXHIBIT TO FIRST AMENDMENT TO
AGREEMENT FOR THE PURCHASE AND
SALE OF REAL ESTATE**

Prepared by:
United States Steel Corporation
Law Department
Room 1500
600 Grant Street
Pittsburgh, Pennsylvania 15219

Return to:
Heritage Land Transfer
1576 McDaniel Drive
West Chester, Pennsylvania 19380

Parcel No. 13-51-1-1

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made on this, the ____ day of _____, 2007, by and between **UNITED STATES STEEL CORPORATION** (hereinafter in the singular or plural referred to as the "Grantor"), of the one part, and **YOOKEL INC.**, a New York corporation, (hereinafter in the singular or plural referred to as the "Grantee"), of the one part,

WITNESSETH, that in consideration of the sum of Six Million, Three Hundred and Ninety Thousand dollars and 00/100 Dollars (\$6,390,000.00), in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant, bargain, sell, alien, convey, confirm, and with ***limited warranty*** covenants unto Grantee, its successors, and assigns, the real property described in Exhibit "A" attached hereto and incorporated herein by this reference; ***TOGETHER*** with all improvements located thereon (hereinafter the "Premises"); subject to the following covenants, conditions and restrictions.

Grantee its successors and assigns shall not withdraw, use for human or animal consumption, industrial, agricultural or commercial applications, or otherwise disturb the groundwater on, upon or under the Premises, for any purpose whatsoever.

Grantor hereby restricts the uses of the property to use as non-residential property, as defined as, "any real property on which commercial, industrial, manufacturing or any other activity is done to further the development, manufacturing or distribution of goods and services, intermediate and final business activities, research and development, warehousing, shipping, transport, remanufacturing, stockpiling of raw materials, storage, repair and maintenance of commercial machinery and equipment, and solid waste management. This term shall not include schools, day care centers, nursing homes or other residential-style facilities or recreational areas." All residential use of the property for the housing of human beings is prohibited.

TO HAVE AND TO HOLD the aforesaid real property and improvements, together with all and singular the rights, members, hereditaments and appurtenances thereof, to the same being, belonging, or in any wise appertaining, to the only proper use, benefit, and behoove of Grantee, forever in **FEE SIMPLE**.

Grantor will, with **SPECIAL WARRANTY FOREVER DEFEND** unto Grantee, the right and title to the aforesaid real property and improvements against the claims of all persons claiming, owning, or holding by, through or under Grantor; provided, however, that Grantor makes and will not defend against, the matters set forth as indicated below:

1. Property taxes owing on the Premises, which are not yet due and payable;
2. Government actions, including zoning restrictions and building and use restrictions, including variances;
3. All matters which a current and accurate survey or a physical inspection of the Premises would reveal;
4. All easements, covenants, conditions, licenses, rights of way, and restrictions recorded in the Bucks County records (other than judgments, mortgages, and other monetary liens);
6. All easements, licenses, rights-of-way for utility or rail services recorded in the Bucks County records.

General taxes and special assessments for the year 2007 shall be prorated between Grantor and Grantee to the date of the Closing, such taxes for the year 2008 and thereafter to be paid by Grantee.

NOTICE: Grantor hereby gives notice pursuant to the Pennsylvania Hazardous Site Cleanup Act (35 P.S. 6020.101, *et seq.*) and the Pennsylvania Land Recycling and Environmental Remediation Standards Act (Act 2, 35 P.S. 6026.101, *et seq.*) that:

An environmental investigation of the site has been conducted. Soil samples were collected from fifteen (15) test pits (see Exhibit "B" for the test pit locations). Target Compound List (TCL) volatile and semi-volatile substances, as well as polychlorinated biphenyls (PCB's) and Priority Pollutant (PP) metals were reported above analytical detection limits but below Pennsylvania statewide residential health standards with the exception of one sample at test pit 12 that reported naphthalene at a concentration of 210,000 micrograms per kilogram (see Exhibit "C" for a complete list of all hazardous substances detected on the site).

By its acceptance of this Deed, Grantee, on behalf of itself, its successors, and assigns, acknowledges that the physical and environmental condition of said property conveyed hereunder has been inspected by Grantee or its duly authorized agent and that said property is accepted by Grantee as a result of such inspection and not upon any agreement, representation, or warranty made by Grantor. Grantee accepts the physical and environmental condition of sold property "AS IS, WHERE IS, WITH ALL FAULTS" and hereby releases Grantor, its successors and assigns, from and against any and all liabilities of any nature known or unknown under CERCLA, RCRA, or the HMTA, or any other local, state, or federal laws, rules, regulations, or ordinances, including without limitation any cost, fine, penalty, or other liability of any nature, known or unknown, arising from or in connection with the physical or environmental condition of the Property, except with respect to, 1: the Final Administrative Order on Consent, Docket No. RCRA-III-065-CA (the "Consent Order") applicable to the Premises and, 2: Pennsylvania Department Of Environmental Protection Act 2 clearance and release of liability (Act 2). Grantor has delivered to Grantee and Grantee acknowledges receipt of a copy of the Consent Order. Grantor agrees that it shall be responsible for all requirements under the Consent Order and Act 2 and shall bear the costs of all studies, remediation, monitoring, and other requirements under the Consent Order and Act 2. Grantor retains the right to enter the Premises as necessary to discharge its obligations under the Consent Order and Act 2 and agrees that it will conduct any activities on the Premises so as to minimize disruptions of Grantee's activities. Grantor agrees to defend,

indemnify and hold harmless Grantee its successors, assigns, or lessees against and from any liability imposed, or sought to be imposed, on Grantee for performance of any requirement of the Consent Order or Act 2 and, if additional work is required to remediate or otherwise respond to contamination addressed by the Consent Order or Act 2, for performance of such work, provided, however that Grantor shall not be responsible to Grantee for any liability caused or created by Grantee or its successors, assigns, or lessees. It is the express intention of the parties that this assumption and release run with the Property and shall be binding upon all of Grantee successors and assigns. (For the purpose of this provision, "CERCLA" shall mean and refer to the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 5 9601, *et seq.*, as amended, and "RCRA" shall mean and refer to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, as amended.)

EXCEPT AS SET FORTH IN THIS DEED AS TO THE PHYSICAL CONDITION OF THE PROPERTY PRIOR TO GRANTEE'S OWNERSHIP, NO PRIVATE RIGHT OF ACTION SHALL ACCRUE TO ANY PURCHASER OF THE PROPERTY, WHETHER BY FORECLOSURE OR OTHERWISE, DUE SOLELY TO THE TAKING OF TITLE TO THE PROPERTY AND ANY SUCH GRANTEE DOES WAIVE ANY AND ALL RIGHT TO CLAIM AGAINST GRANTOR AND GRANTEE, OR THEIR SUCCESSORS AND ASSIGNS, FOR ANY COST, LOSS, DAMAGE, OR LIABILITY SUCH GRANTEE OR ITS SUCCESSORS AND/OR ASSIGNS MAY INCUR AS A RESULT OF THE DISCOVERY OF A DEFICIENCY IN THE PHYSICAL CONDITION OF THE PROPERTY OR THE NEED OR DESIRABILITY TO DO ANY REMOVAL, CORRECTIVE, OR REMEDIATION WORK INCLUDING, BUT NOT LIMITED TO, WORK IN CONNECTION WITH HAZARDOUS MATERIALS OR WASTE PURSUANT TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT, AS AMENDED, OR THE RESOURCE CONSERVATION AND RECOVERY ACT, AS AMENDED, OR OTHER SIMILAR FEDERAL, STATE OR LOCAL LAWS, REGULATIONS, OR ORDINANCES.

IN WITNESS WHEREOF, Grantor has caused the within *Special Warranty Deed* to be executed and delivered by its duly-authorized officer, its seal to be affixed, and the execution and the execution and sealing of these presents to be attested by its Assistant Secretary, all as of the day and year first above written.

ATTEST:

UNITED STATES STEEL CORPORATION

By: _____

Title: Regional Manager, USS Real Estate, a
division of United States Steel Corporation

Dated: _____

COMMONWEALTH OF PENNSYLVANIA :
 : ss:
COUNTY OF ALLEGHENY :

I, a notary public for the said County and Commonwealth, do hereby certify that Dennis M. Jones personally appeared and is known to me to be the **Regional Manager of USS Real Estate, a division of United States Steel Corporation**, a Delaware corporation, and that Thomas M. White also personally appeared and is known to me to be the **Assistant Secretary** of said corporation, both of which are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day, in person and severally acknowledged that, as such officers, they signed and delivered said instrument as officers of said corporation, and caused the seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal on this, the ____ day of _____, ____.

_____(SEAL)
Notary Public

SPECIAL WARRANTY DEED

FROM:

UNITED STATES STEEL CORPORATION
600 Grant Street, Room 1683
Pittsburgh, Pennsylvania 15219-2800

TO:

YOOKEL, INC.
29 Riverside Avenue
Building 2
Newark, New Jersey 07104-4237

**TO THE RECORDER OF DEEDS OF BUCKS COUNTY,
COMMONWEALTH OF PENNSYLVANIA**

**AFTER RECORDING DEED,
KINDLY MAIL TO:**

Heritage Land Transfer
1576 McDaniel Drive
West Chester, Pennsylvania 19380

ACKNOWLEDGMENTS OF GRANTEE

2. The undersigned does hereby certify that its exact mailing address is:

By: _____

Title: _____

Dated: _____

EXHIBIT "A"

LEGAL DESCRIPTION

**LEGAL DESCRIPTION
LOT NUMBER 9**

ALL THAT CERTAIN tract of land situate in the Township of Falls, County of Bucks, Commonwealth of Pennsylvania, as shown on Plan Sheet 9 of 13, titled "Subdivision Plan", dated November 10, 1987, as prepared by Showalter and Associates of Chalfont, Pennsylvania.

BEGINNING on the right-of-way line of New Ford Mill Road N 09 49' 02" W, a distance of 700.80 feet; thence N 82 55' 37" E, a distance of 898.66 feet; thence S 07 04' 23" E, a distance of 700.00 feet; thence S 82 55' 37" W, a distance of 866.10 feet to the Point and Place of BEGINNING.

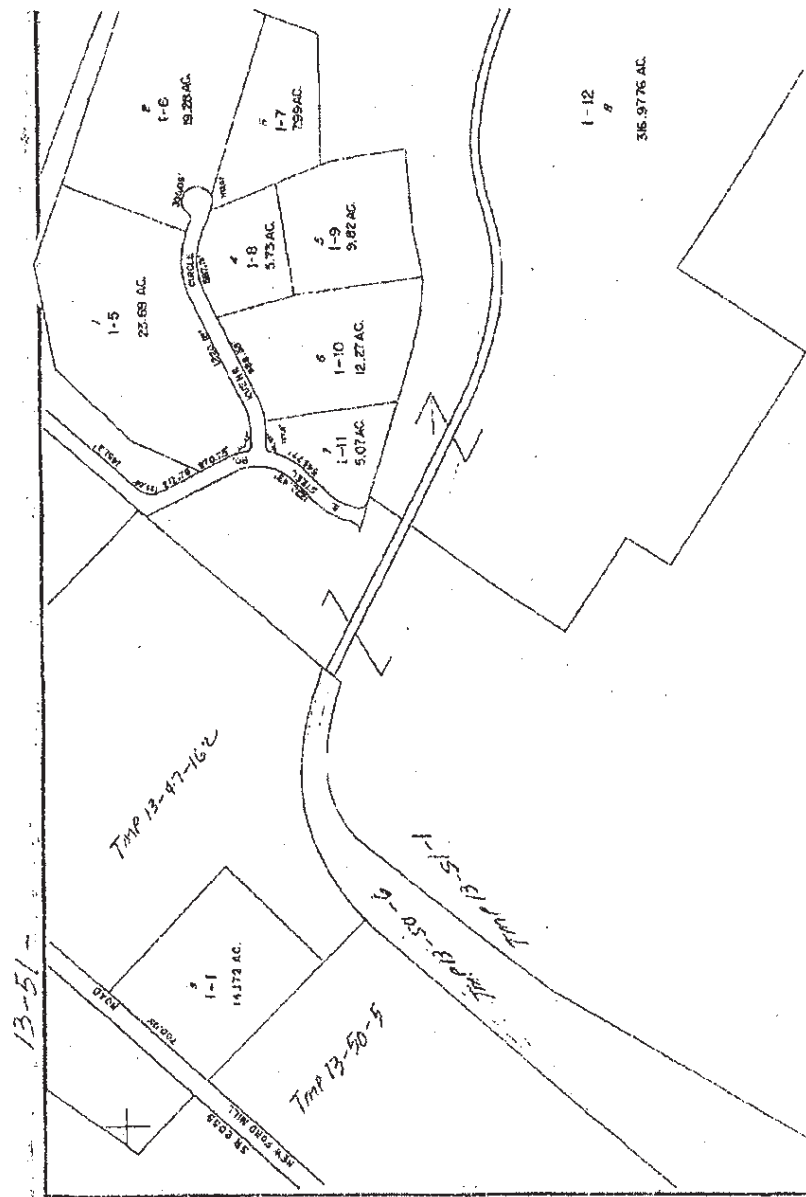
CONTAINING: 14.172 Acres

PROJECT NUMBER: 6183

DATE: December 1, 1987
Revised December 18, 1987

Showalter & Associates

EXHIBIT "A" cont.



12

EXHIBIT "B"

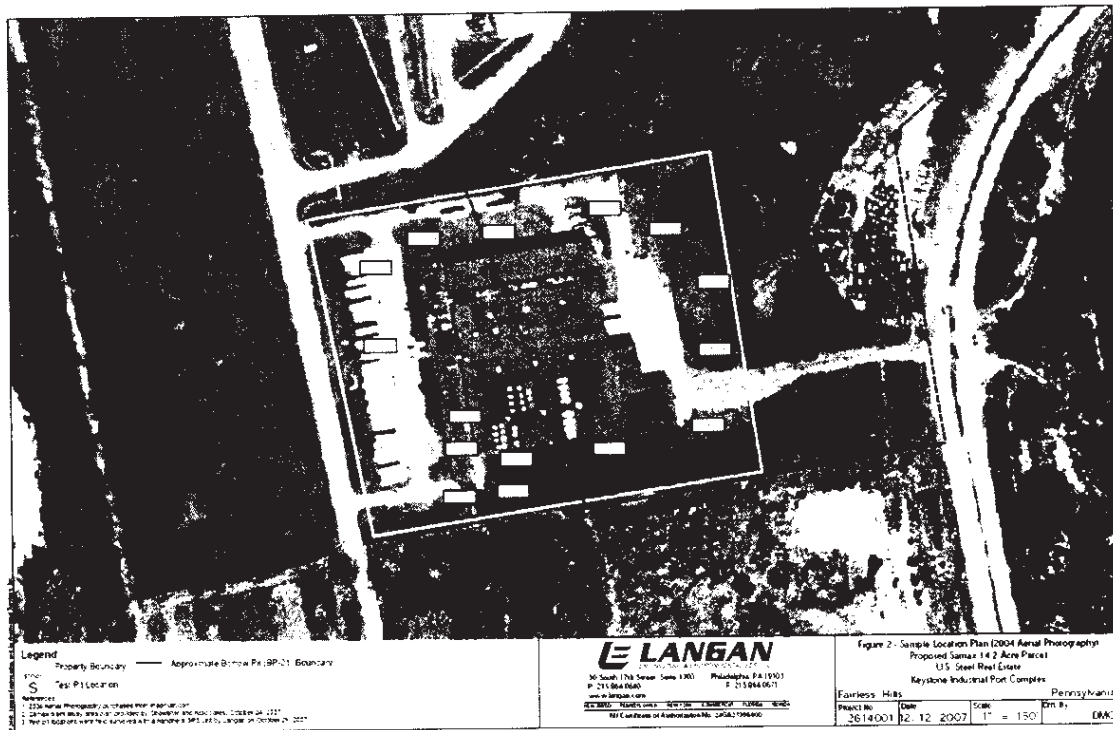


EXHIBIT "C"

Summary of Hazardous Substances Detected in Site Soils
U.S. Steel-Proposed Samax 14.2 Acre Parcel
Fairless Hills, Pennsylvania

TCL Volatiles	TCL Semivolatiles	PCB (ug/kg)	PP Metals (mg/kg)
Acetone	Acenaphthene	Aroclor 1016	Antimony
2-Butanone	Acenaphthylene	Aroclor 1254	Arsenic
Carbon Disulfide	Acetaphenone		Beryllium
Isopropylbenzene	Anthracene		Cadmium
Ethylbenzene	Benzo(a)anthracene		Chromium ^{III}
Methylene Chloride	Benzo(a)pyrene		Copper
Xylenes (Total)	Benzo(b)fluoranthene		Lead
	Benzo(g,h,i)perylene		Mercury
	Benzo(k)fluoranthene		Nickel
	1,1'-Biphenyl		Selenium
	bis-(2-Ethylhexyl)phthalate		Silver
	Butylbenzylphthalate		Thallium
	Chrysene		Zinc
	Dibenzo(a,h)anthracene		
	Dibenzofuran ³		
	Diethylphthalate		
	Di-n-butylphthalate		
	Fluoranthene		
	Isophorone		
	Fluorene		
	Ieno(1,2,3-cd)pyrene		
	Naphthalene		
	Phenanthrene		
	Pyrene		

Declaration Exhibit B

BUCKS COUNTY RECORDER OF DEEDS

55 East Court Street
Doylestown, Pennsylvania 18901
(215) 348-6209

Instrument Number - 2008006842

Recorded On 1/17/2008 At 3:15:10 PM

* Total Pages - 15

* Instrument Type - DEED AGREEMENT - NO PROPERTY TRANSFER

Invoice Number - 234595

User - KLJ

* Grantor - UNITED STATES STEEL CORP

* Grantee - YOOKEL INC

* Customer - HERITAGE LAND TRANSFER

*** FEES**

RECORDING FEES \$53.50

TOTAL PAID \$53.50

This is a certification page

DO NOT DETACH

This page is now part
of this legal document.

RETURN DOCUMENT TO:
HERITAGE LAND TRANSFER

I hereby CERTIFY that this document is
recorded in the Recorder of Deeds Office
of Bucks County, Pennsylvania.



Edward R. Gudknecht
Edward R. Gudknecht
Recorder of Deeds

* - Information denoted by an asterisk may change during
the verification process and may not be reflected on this page.

Book: 5673 Page: 379





RECEIVED

2008 JAN 17 P 2: 21

BUCKS COUNTY
RECORDER OF DEEDS*Prepared by:**United States Steel Corporation**Law Department**Room 1500**600 Grant Street**Pittsburgh, Pennsylvania 15219**Return to:**Heritage Land Transfer**1576 McDaniel Drive**West Chester, Pennsylvania 19380**Parcel No. 13-51-1-1***RAIL EASEMENT**

THIS EASEMENT (this "Agreement") is made effective as of this, the 21st day of December, 2007, by and between:

/ **UNITED STATES STEEL CORPORATION**, a Delaware corporation,

located at 600 Grant Street, Pittsburgh, Pennsylvania 15219-2800

(hereinafter the "Grantor")

and

/ **YOOKEL, INC.**, a New York corporation,

with an address of 29 Riverside Avenue, Building 2, Newark, NJ 07104-4237

(hereinafter "Grantee").

WITNESSETH:

WHEREAS, Grantor is grantee of the existing easement located in Falls Township, Bucks County, Pennsylvania described in Exhibit "A" attached hereto (the "Industrial Park"). Contemporaneously with this Agreement, Grantee is becoming the owner of the property within the Industrial Park described in Exhibit "B" attached hereto (the "Property"). Grantor desires to grant to Grantee an easement for the purposes described herein and subject to the terms and conditions hereof, in, to, upon and over the area shown on Exhibit "C" attached hereto and defined in Section 1(B) hereof as the "Easement Area," for the purpose of constructing, maintaining, repairing and replacing the Facilities, as hereinafter defined, and for conveying rail cars to and from the Property and staging and storing the same. Conveyance of railcars over the rail system serving the Industrial Park (the "Rail System") is currently performed for Grantor by Consolidated Rail Corporation ("Conrail"), Norfolk Southern Railroad and CSX Transportation. Conrail and any subsequent transporter that conveys railcars over the Rail System are called "Transporter". The Rail System is currently maintained for Grantor through an operating agreement with Conrail.

NOW, THEREFORE, in consideration of all the covenants, terms, and conditions herein contained, and intending to be legally bound hereby, the parties hereto do agree as follows:

Section 1 -- Granting Clause / Purpose / Terms and Conditions.

- (A) Grantor does hereby grant and convey unto Grantee, its successors and assigns, a perpetual, exclusive easement (the "Easement") in, to, upon and over the Easement Area for the purposes described in Section 2(C) below.
- (B) The rights granted herein to Grantee shall be at Grantee's sole risk and without any warranty or representation by Grantor as to the condition of the Easement Area. Any improvements made to the Easement Area shall be at Grantee's sole cost and expense, and subject to the consent and approval of Grantor and approval of Transporter, which may not be unreasonably withheld. Grantor and Transporter shall have the right to approve any plans or drawings related to such improvements as set forth in Section 2(C)(f) below. Grantee agrees that Grantor shall not be responsible or liable for any damage to or loss of any property belonging to Grantee, its employees, agents, licensees or representatives, when such loss or damage arises out of or is in any way connected with the condition of the Easement Area.

(C) The location of said easement area is more particularly described as follows:

BEGINNING at a point on Lot Number 10, S 82° 58' 35" N, a distance 205.37 feet; S 67° 49' 56" N, a distance of 174.15 feet; N 07° 04' 23" W, a distance of 75.50 feet; N 82° 58' 35" E, a distance of 377.04 feet to a curve; S 89° 33' 01" E, a distance of 1,050.00 feet; on a curve to the right having a radius of 1,050.00 feet, and an arc length of 30.20 feet to the Point and Place of BEGINNING.

A map is provided on Exhibit "C" attached hereto and incorporated herein (hereinafter "Easement Area").

(D) Terms and Conditions of Easement. The Easement granted herein is subject to the following terms, reservations and conditions:

- (a) Purpose. The Easement is given for the purpose of constructing, maintaining, repairing and replacing the Facilities, permitting the conveyance of rail cars to and from the Property to tracks outside of the Property served by a rail carrier, for the switching of cars between Grantee's siding and the Rail System, and the staging and storage of rail cars, all in furtherance of the conduct of Grantee's business.
- (b) Use. The Easement may be used by Grantee to arrange for rail service to be provided to the Property over the Rail System by the Transporter. The Easement may be used by railroad locomotives, track mobiles, railcar handling equipment and railroad cars (including tank cars). The use of the Easement to provide rail service to the Property shall be in accordance with all applicable laws and regulations.
- (c) Maintenance. Grantor shall cause, to the extent capable, Conrail to keep and maintain the Rail System in unobstructed, good working condition adequate to carry rail cars using the Rail System. Grantee shall maintain the Facilities. Grantee shall permit Grantor and/or Transporter to inspect the Facilities.
- (d) Exclusive. The rights herein granted to Grantee are exclusive to Grantee, and Grantee shall have the right to grant other licenses or easements, for this specific Purpose and Use as defined in this document, to other parties for such times that Grantor may deem proper.
- (e) Reservation. Grantor accepts and reserves unto Grantor, its successors and assigns, the right and privilege, exercisable on a continuing basis from time to time, to maintain, repair, alter or substitute the rail easement subject to this Agreement as Grantor may deem necessary, appropriate or advisable.

- (f) Construction / Right to Review and Approve Plans. Grantee, at its expense, shall construct the spurs to be located on the Easement Area (the "Spurs"), and the switches to connect the Spurs to the Rail System (the "Switches" and, collectively with the Spurs, the "Facilities") to at least the minimum standards of the Transporter. Grantee shall obtain all necessary approvals and permits for construction. Grantor will cooperate with Grantee in obtaining such permits and approvals. Upon completion of the installation of the Switches they shall become part of the Rail System, but the Spur shall belong to Grantee. Grantee shall indemnify, defend and hold harmless Grantor from and against any claim of loss or damage arising out of the construction of the Spurs and Switches by Grantee and its contractors. Grantor shall have the right to control to reasonable standards and advise Grantee on all matters affecting safety and the optimum utilization of available space on its property. Prior to commencing any operations on the Easement Area, Grantee shall submit to Grantor detailed design plans and specifications, including, without limitation, final plan and profile drawings, equipment and material specifications and construction methods, techniques, sequences and procedures. Such design plans and specifications shall comply with all applicable federal, state or municipal laws, orders, regulations and recommendations. Grantor reserves the right to disapprove any designs, specifications, materials, equipment or any construction, operation or maintenance procedure reasonably deemed by it to be unsafe or contrary to the maximum utilization of its property, in which event Grantee shall replace, revise or modify such designs, specifications, materials, equipment or procedures to comply with Grantor's reasonable requirements.
- (g) Neither review of Grantee's plans and specifications, nor inspection of construction of the Facilities by Grantor shall imply any assumption of liability by Grantor for proper location of the Facilities or the safety aspects of the construction or operation of the Facilities, all of which shall be the sole responsibility of Grantee. Notwithstanding anything herein to the contrary, Grantee shall construct the Facilities within the Easement Area in compliance with the detailed plans, designs and specifications previously submitted by Grantee pursuant to this subsection (f). Grantee may deviate from such plans, designs and specifications only with Grantor's and Transporter's prior written consent, which may not be unreasonably withheld, conditioned or delayed; provided, however, that should Grantee so deviate, Grantee shall, within thirty (30) days of completion of construction operations on the Easement Area, provide final "as-built" drawings of the Facilities together with a true and correct survey showing all deviations from the originally submitted design and location.

Section 2 -- Payments by Grantee.

(A) Grantee shall pay Grantor a monthly ground rental in the amount of Zero and No/100 Dollars (\$.00) per acre included in the Easement Area (to be prorated to 1/100 of any partial acreage included within the Easement Area) for

the granting of this Easement. Said rental payments shall be paid by Grantee to Grantor, without set-off, recoupment, or counterclaim, and sent to Property Manager, United States Steel Corporation, 600 Grant Street, Pittsburgh, Pennsylvania, 15219-2800 on the first day of each month after the execution of this Agreement. Any such payments shall be prorated for any partial month within the term of this agreement.

In the event Grantee discontinues its payments of the monthly ground rental, USS shall be entitled to send a notice of default to Grantee, and if within ten (10) business days following Grantee's receipt of the notice Grantee does not pay installments of the monthly ground rental then due and payable, USS may suspend Grantee's use of the Easement Area until all installments of the monthly ground rental then due and payable have been paid. In the event Grantee becomes six months in arrears, Grantor may Terminate the Easement.

(B) Grantee is solely responsible for the cost of recording this instrument, which cost shall include, but not be limited to, recording fees, transfer tax (es), or any other cost associated with the recording of this instrument, if any.

Section 3 -- Indemnification.

(A) In the exercise of its rights hereunder, Grantee agrees to indemnify, defend and hold harmless Grantor, including its subsidiaries, facilities, employees, successors and assigns from and against any and all claims, costs, demands, damages, liabilities, judgments, or expenses, including attorney fees, court costs, consultant fees and other legal costs, for any personal injury, death, or property damage or any other damages of whatever kind or nature whatsoever arising out of or resulting from, or in any way associated with the activities described herein of Grantee, its employees, agents, invitees, successors, and assigns or the activities of any other party or entity whatsoever, directly or indirectly, against Grantor.

(B) Grantee further agrees to indemnify, defend and hold harmless, Grantor, including its subsidiaries, facilities, employees, successors, and assigns, from and against any and all claims, suits, expenses and costs, including court costs,

attorneys' fees and other legal costs, from any environmental liability arising or resulting from or caused by Grantee's activities herein described.

(C) If Grantee bears direct witness to or receives information from any third party of personal injury, property damage, or environmental release occurring at or adjoining the Easement Area, Grantee shall provide Grantor with immediate notice of any such event.

(D) The obligations set forth in this Section 3 shall continue after the termination of this Easement as to any matters that occurred during or resulted from the term of this Easement.

Section 4 -- Title.

(A) The granting of this Easement is made subject to mining, oil and gas rights heretofore conveyed or excepted and reserved in instruments of record; or apparent upon inspection.

UNITED STATES STEEL CORPORATION, FOR ITSELF, ITS SUCCESSORS, AND ASSIGNS, HEREBY RESERVES ALL MINERALS, INCLUDING SAND, GRAVEL, AND ANY OTHER NATURAL SUBSTANCE HAVING SUFFICIENT VALUE TO BE MINED, QUARRIED, OR EXTRACTED FOR ITS OWN SAKE OR FOR ITS OWN SPECIFIC USE, TOGETHER WITH RIGHT TO ENTER ON, EXPLORE FOR, DIG, MINE, AND RECOVER THE SAME; PROVIDED THAT THE EXERCISE OF THIS RESERVATION SHALL NOT INTERFERE WITH THE USE OF THE EASEMENT AREA FOR THE PURPOSES HEREIN PROVIDED OR IF EXERCISED THE EASEMENT AREA IS RELOCATED AS PROVIDED FOR HEREIN.

(B) Grantor makes no warranty of title to the Easement Area as described herein, and Grantee hereby accepts this Easement subject to any adverse interest of third parties therein existing as of the date hereof, whether known or unknown, recorded or unrecorded. Further, it is understood and agreed that this Agreement is subject to any and all highway, railroad, and other public or private rights or easements, now existing in or across the Easement Area or any part thereof, and to the rights of any person or other party who may currently have any interest in the Easement Area, including any minerals therein.

Section 5 -- Clearances and Signs

Grantee will not permit any other structure or obstruction of any kind to be placed or maintained within the Easement Area except as contemplated by this Agreement. Grantee shall provide and maintain warning signs, at its expense, that are acceptable to Grantor and Transporter, at locations designated and/or approved by Grantor and Transporter.

Section 6 -- Grantor's Right to Suspend Operation

Grantor may, in its reasonable discretion, suspend the operation of the Track immediately and without notice if Grantor determines that the condition of the Track or the tracks of any other party necessary to provide service over the Track are unsafe. Upon such occurrence, Grantor will notify Grantee as quickly as practicable of the reason for the suspension of service and will resume service as soon as the unsafe condition has been eliminated.

Section 7 -- Environmental Clean-up

- (A) In its construction, maintenance and use of the Facilities Grantee, at its own expense, shall comply with the policies and practices recommended by the Association of American Railroads, the Transporter, and the Grantor and shall comply with all applicable federal, state or municipal laws, orders, regulations and recommendations including, but not limited to, those relating to safe handling, storage and disposition of the hazardous materials.
- (B) If any hazardous material handled on the Track is flammable or explosive, Grantee hereby agrees that it will, at its sole cost and expense, and in a manner satisfactory and acceptable to Grantor, arrange for installation of: (i) such derail devices as may be specified by Grantor at locations on the Track designated by Grantor; (ii) such bonding and grounding of the Track as shall be required by Grantor; and (iii) such other protective devices as may be required by Grantor to protect the Track against any foreign or stray electric current that may be present at or in the vicinity of said Track.
- (C) Should Grantee cause any discharge, release, leakage, seepage, spillage or emission hereinafter collectively called "Discharge" of any element, product, substance, chemical, material, pollutant, contaminant, waste or hazardous or toxic substance, waste material as hereinafter defined; or petroleum, including crude oil or any fraction thereof, or natural gas, liquefied natural gas, synthetic gas or mixed gases thereof, all of which are hereafter called "Hazardous Matter", occur upon, in or from the Easement Area which creates or is likely to create a public nuisance or render the air, soil, ground, surface water, groundwater or any other part of the Easement Area detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational or other legitimate or beneficial uses, and such occurrence is due to Grantee's actions or inactions during the Term hereof, and if such Discharge

should occur (as defined in applicable Environmental Law) during the Term, Grantee shall promptly inform Grantor of such occurrence, and Grantee, at its sole cost and expense, shall be obligated to clean up and remediate the Easement Area and any other property affected thereby, to the levels required under applicable Environmental Law.

After Grantor's receipt of Grantee's notice pursuant to the foregoing paragraph, Grantor may make written demand on Grantee for cleanup of the Easement Area or other affected property in accordance with this subsection, and if Grantee does not undertake to comply with that demand within ten (10) days, then Grantor shall have the right to clean up such affected property to Grantor's satisfaction, and Grantor's costs shall all be chargeable to Grantee, provided that Grantor's exercise or failure to exercise such right shall not be a waiver of any other rights it may have under this subsection or at law.

(D) Grantee shall comply with all Environmental Laws as herein defined, and *Grantee shall defend and indemnify and hold harmless Grantor against and from* any claim, order, decree, judgment, action, suit, cost, fine, fee, penalty or any other expense or liability arising from the violation of Environmental Law or the failure to remediate any condition described above by *Grantee*, its assigns, agents, employees or contractors.

Section 8 - Assignment Sublease:

This Agreement and Grantee's rights hereunder shall not be assigned or in any manner transferred by Grantee, nor shall the Track or any part thereof be sublet by Grantee, without the express prior written consent of Grantor, and any attempt to do so shall be null and void and shall constitute a breach and be grounds for immediate termination of this Agreement.

Notwithstanding anything in the forgoing to the contrary, this Easement runs with the Land. The benefits and burdens hereof shall be binding upon and shall inure to the benefit of Grantor and Grantee and their respective successors and assigns.

Section 9 -- Notice.

Any notice that may at any time be required to be given hereunder shall be deemed to have been properly given if personally hand delivered to the other party, or if sent by United States first class registered or certified mail, postage prepaid, or by nationally-recognized courier guarantying overnight delivery, or by facsimile transmission, addressed as follows:

If to Grantor:

President – USS Real Estate
United States Steel Corporation
600 Grant Street, Room 1500

Facsimile: (412) 433-5148

Pittsburgh, PA 15219-2800

With a copy to:

Attorney – Real Estate
United States Steel Corporation
600 Grant Street, Room 1500
Pittsburgh, PA 15219-2800

Facsimile: (412) 433-2843

If to Grantee:

Facsimile: (____) _____

With a copy to:

Facsimile: (____) _____

All notices shall be effective when received by the party to whom addressed. Either party may by such a notice to the other party designate a different addressee to whom, or address to which, any such notice shall be sent.

Section 10 -- Applicable Law. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

Section 11 -- Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior understandings and writings with respect to the subject matter hereof, and may be amended only by a written agreement signed by the parties hereto.

[The remainder of this page is left intentionally blank]

IN WITNESS WHEREOF, Grantor, United States Steel Corporation, has caused this instrument to be executed in its company name by Dennis Jones, ^{Regional Manager} ~~its~~ USS Real Estate, a division of United States Steel Corporation, and who is duly authorized to execute this instrument on behalf of said company as of the date identified herein.

GRANTOR: United States Steel Corporation
By: Dennis M Jones
Title: Regional Manager,
USS Real Estate, a division of United States
Steel Corporation

GRANTEE, Yookel Inc hereby accepts this instrument in accordance with the terms and conditions contained herein.

GRANTEE: Samuel Fleischman
By: Samuel Fleischman
Title: President.

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF Bucks :

ON THIS, the 21st day of December, 2007, before me, a notary public for said County and Commonwealth, personally appeared Dennis M. Jones, who acknowledged himself to be Regional Manager of USS Real Estate, a division of United States Steel Corporation, and, as such, he is duly-authorized to execute the foregoing Agreement for the purposes therein contained by signing the name of the company by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Judith L. Cochran (SEAL)
COMMONWEALTH OF PENNSYLVANIA Notary Public
Notarial Seal
Judith L. Cochran, Notary Public
Falls Twp., Bucks County
My Commission Expires Mar. 7, 2010
Member, Pennsylvania Association of Notaries

My Commission Expires: 3/7/10

State
COMMONWEALTH OF New Jersey :
: SS:
COUNTY OF Bergen :

ON THIS, the 14 day of 2008, January before me, a notary public for said County and State, personally appeared Samuel Fleishman who acknowledged that he executed the foregoing Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Carol Lopez Karcz (SEAL)
Notary Public

My Commission Expires:

12/6/10

CAROL LOPEZ-KARCZ
Notary Public, State of New Jersey
My Commission Expires December 6, 2010

EXHIBIT A

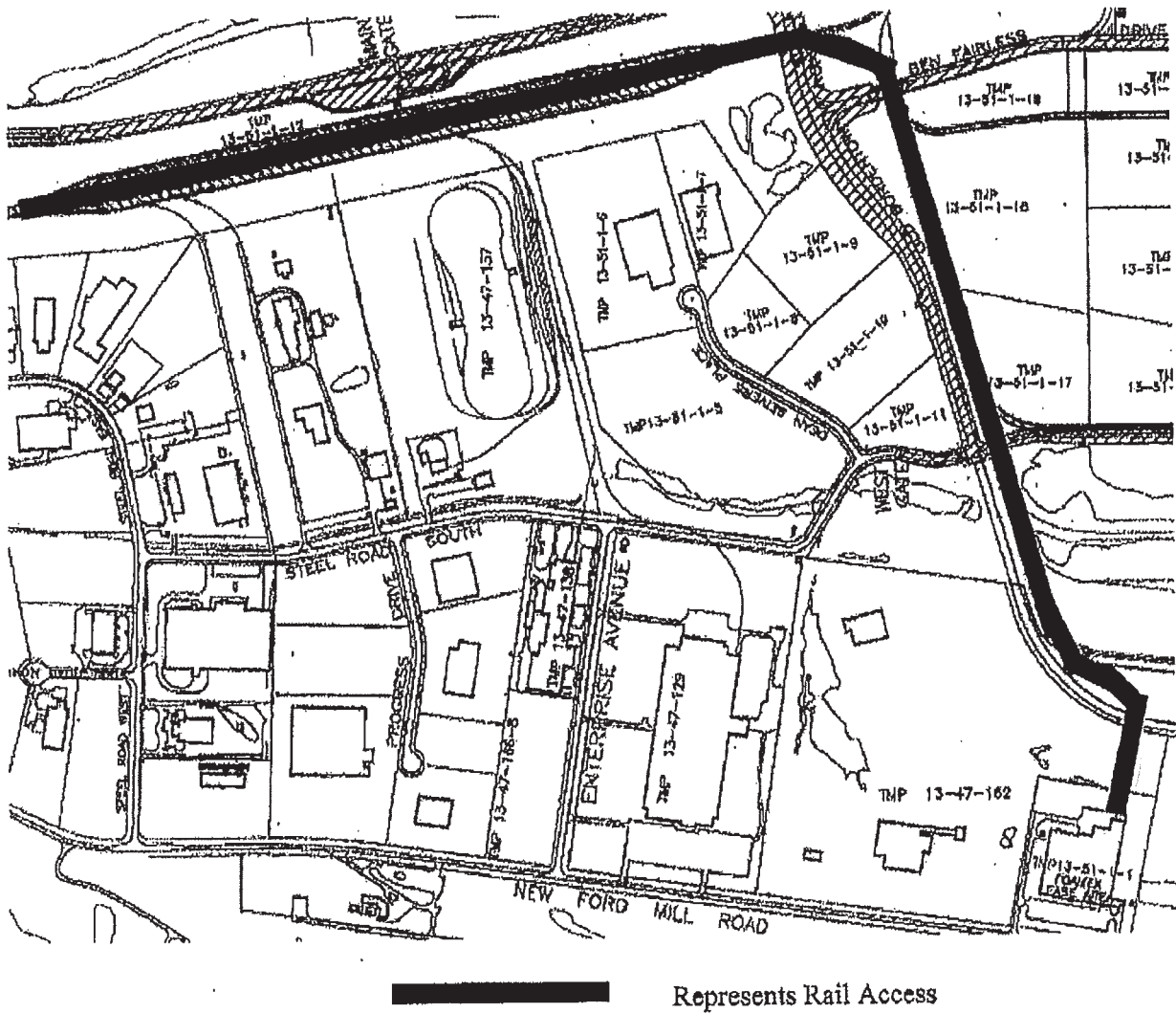


EXHIBIT B

ALL THAT CERTAIN tract of land situate in the Township of Falls, County of Bucks, Commonwealth of Pennsylvania, as shown on Plan Sheet 9 of 13, titled "Subdivision Plan", dated November 10, 1987, as prepared by Showalter and Associates of Chalfont, Pennsylvania.

BEGINNING on the right-of-way line of New Ford Mill Road N 09° 49' 02" W, a distance of 700.80 feet; thence N 82° 55' 37" E, a distance of 898.65 feet; thence S 07° 04' 23" E, a distance of 700.00 feet; thence S 82° 55' 37" W, a distance of 865.10 feet to the Point and Place of BEGINNING.

BEING Parcel # 13-51-1-1.

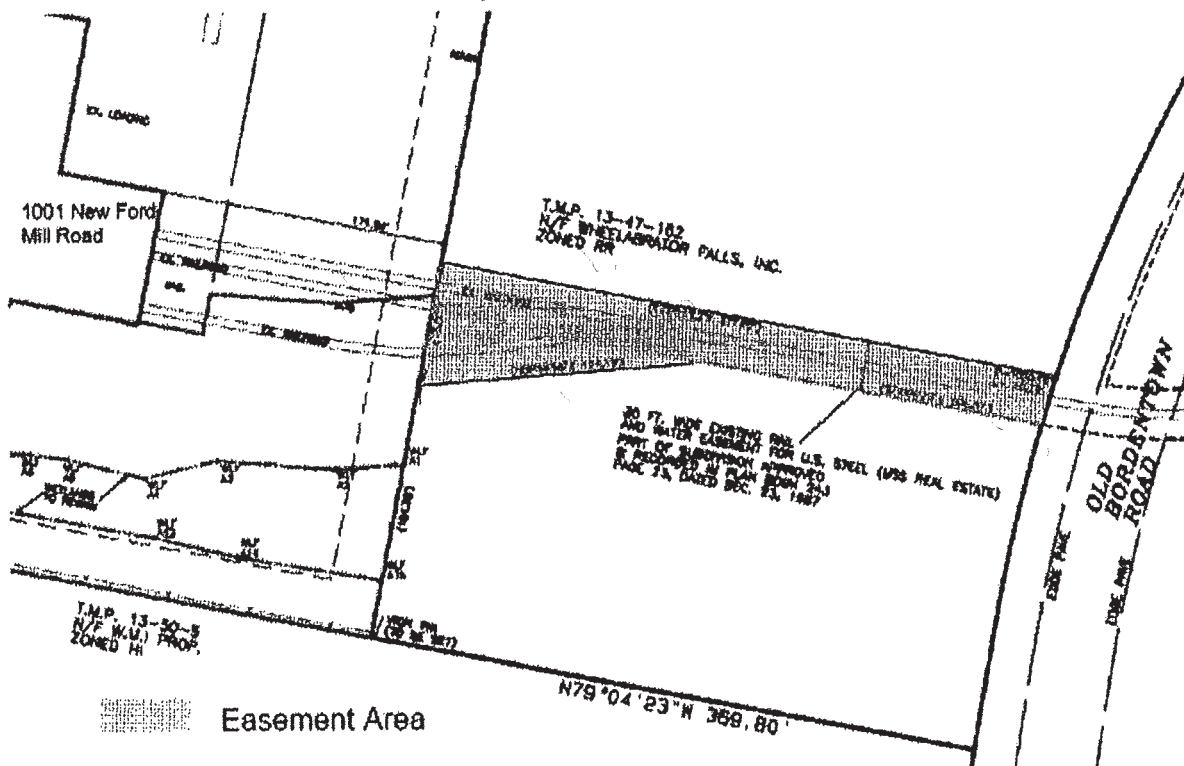
BEING known as 1001 New Ford Mill Road.

BEING Part of the same premises which Manor Real Estate and Trust Company, a Corporation of the Commonwealth of Pennsylvania granted and conveyed unto Carnegie-Illinois Steel Corporation, by Deed dated 12/29/1950 and recorded in the Office for the Recording of Deeds in Bucks County in Book 974, Page 300, in fee.

Address of Property (for identification purposes only):

Parcel/Folio #: 13-51-1-1
Street: 1001 New Ford Mill Rd.
City, State: Morrisville, Pennsylvania

(Rail Easement Plan)



Declaration Exhibit C

RAIL OPERATING SERVICE AGREEMENT
BETWEEN
USX CORPORATION
AND
CONSOLIDATED RAIL CORPORATION

USX REALTY DEV
JAN 10 2000
RECEIVED

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Exhibits

- A. Drawing FS-26, dated June 1, 1999 and entitled "Overall Plan of Fairless Works".
- B. Drawing SK279, last revised October 15, 1985, and entitled "Fairless Works Railroad Track and Roadway Identification Map".
- C. Sample Lease Provision

RAIL OPERATING SERVICE AGREEMENT

THIS AGREEMENT made as of the ____ day of January, 2000, but effective January 1, 2000, by and between USX CORPORATION - USX Realty Development, a Delaware corporation with offices at 600 Grant Street, Pittsburgh, Pennsylvania 15219-2749 (hereinafter "USX") and CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation with offices at 2001 Market Street, Philadelphia, PA 19101 (hereinafter "Conrail").

WITNESSETH:

WHEREAS, USX owns certain real estate in Fairless Hills, Pennsylvania, which it is developing and intends to further develop as an industrial park ("Fairless Industrial Park"); and

WHEREAS, USX owns certain railroad track at the Fairless Industrial Park (hereinafter "Industrial Park Track"); and

WHEREAS, USX desires to retain Conrail as a rail operator to provide rail switching to present and future shippers in the Fairless Industrial Park; and

WHEREAS, Conrail is willing to provide rail switching service to such parties.

NOW; THEREFORE, in consideration of the mutual covenants contained in this Agreement and intending to be legally bound, USX and Conrail agree as follows:

1. Definitions. The following capitalized terms as used herein shall have the following meaning:

"Adjoining Area" shall mean all of the area within eight (8) feet in each direction from the centerline of the Industrial Park Track.

"Fairless Industrial Park" shall mean the industrial park managed by USX in Fairless Hills, Pennsylvania, as set forth on Exhibit A, an oversize drawing numbered FS-26, dated June 1, 1999 and entitled "Overall Plan of Fairless Works", which is incorporated herein by reference and on Exhibit B, an oversize drawing numbered

SK279, last revised October 15, 1985, and entitled "Fairless Works Railroad Track and Roadway Identification Map, which is also incorporated herein by reference.

"USS Sheet & Tin" shall mean the steel finishing facility located in Fairless Hills, Pennsylvania, which is owned and operated by U.S. Steel Group, a unit of USX Corporation, as depicted on Exhibits A and B.

"Joint Use Tracks" shall mean: (1) rail track retained by USS Sheet & Tin in the North Yard; (2) track between the North Yard and the "fence" at USS Sheet & Tin; and (3) a route through the USS Sheet & Tin facility, as designated by USS Sheet & Tin, which track and/or routes shall be used by USS Sheet & Tin to provide service to USS Sheet & Tin and by Conrail to provide service to the Fairless Industrial Park, as set forth on Exhibit B.

"Conrail" shall mean Consolidated Rail Corporation, a Pennsylvania corporation with offices at 2001 Market Street, Philadelphia, PA 19101.

"Consideration" shall mean the consideration paid by Conrail to USX for the right to operate on the Industrial Park Track.

"Industrial Park Tracks" shall mean the USX track at the Fairless Industrial Park operated by Conrail hereunder, as set forth on Exhibit B, and the Adjoining Area, and all track, rails, switches, ties, beds, and improvements forming a part thereof, located therein or thereon or used in connection therewith.

"Maintenance Contract" shall be a contract between USX and a third party contractor providing for the maintenance of Industrial Park Track.

"Maintenance Contractor" shall be the third party contractor which enters into the Maintenance Contract with USX.

"Service" includes, but is not limited to, picking up and delivering cars from or to the Trunk Line from or to a point within the Fairless Industrial Park.

"Shippers" shall mean all present and future shippers located at the Fairless Industrial Park, who originate and/or receive shipments by rail, excluding the USS Sheet & Tin facility.

"Trunk Line" shall mean Norfolk Southern and CSX Transportation and/or any other trunk line railroads which may in the future provide rail service to the Fairless Industrial Park.

"USX" shall mean USX Corporation - USX Realty Development, a Delaware corporation with offices at 600 Grant Street, Pittsburgh, Pennsylvania 15219-2749.

2. Scope of Agreement. This Agreement sets forth the terms and conditions pursuant to which USX shall retain Conrail as the operator of the Industrial Park Tracks in order to enable Conrail to provide Service to Shippers located at the Fairless Industrial Park. This Agreement does not relate to or affect rail transportation to or from USS Sheet & Tin, except to the extent that rights are granted herein to Conrail to operate over Joint Use Tracks which will also be used by USS Sheet & Tin to provide rail service to USS Sheet & Tin.

3. Grant of Operating Rights. USX does hereby grant to Conrail the right to operate the Industrial Park Track and the Joint Use Track, for the term and upon the conditions set forth in this Agreement. Track designated as Joint Use Track shall be subject to a mutually agreeable Joint Track Operating Agreement to be negotiated between USX (USS Sheet & Tin) and Conrail, which shall identify procedures for communication between USX (USS Sheet & Tin) and Conrail, including procedures for communication in any emergency situation.

4. Term. The term of this Agreement shall commence on January 1, 2000, and it shall continue for its initial term through December 31, 2003. Following such initial term, the Agreement shall remain in effect on a year-to-year basis subject to cancellation at the end of the initial term or at any time thereafter on six months prior written notice to the other party.

5. Operator. Throughout the Term, Conrail shall have the right to be the operator of the Industrial Park Tracks for the benefit of all present and future Shippers, subject to the rights of USX as set forth herein. Conrail may assign its rights hereunder to any Trunk Line providing service to Shippers on Industrial Park Track, but any such assignment and/or any operation by a Trunk Line on Industrial Park Track shall not relieve Conrail of any obligations hereunder. During the Term, USX shall not engage any other third party to operate the Industrial Park Tracks and/or Joint Use Tracks. Conrail understands that its rights as operator hereunder may be affected by USX's rights and obligations, and Shippers' rights and obligations with respect to rail service (including, but not limited to the tenants' non-exclusive license for rail access), which are contained in USX's leases with tenants. A sample of the rail service provision in the leases is attached as Exhibit C. Conrail is also aware of the provisions of the decision of the Pennsylvania Public Utility Commission in Docket P-00920585, dated June 15, 1993.

6. Consideration. Conrail shall, in consideration of the rights granted herein pay to USX a fee of twenty five dollars (\$25.00) per car for each revenue movement of a rail car (i.e., a loaded car moving under a separate revenue waybill) over Industrial Park Track (excluding moves to or from USS Sheet & Tin) during the term of this Agreement. As additional consideration to USX, Conrail shall pay to USX's Maintenance Contractor the maintenance fees described in Section 9 herein.

7. Payment. Conrail shall maintain records documenting the number of revenue moves over Industrial Park Track during each calendar quarter during the term of this Agreement and shall remit to USX, not later than fifteen (15) days after the end each calendar quarter, the amount owed by Conrail to USX pursuant to Section 6 herein, together with reasonable documentation supporting the calculation of said amount.

8. Rates. During the term of this Agreement the compensation to Conrail for each movement of a rail car (loaded or empty) on USX track into and out of the Fairless Industrial Park shall be included in the portion of the current or future tariff and/or contract rates which are paid to Conrail by the Trunk Lines for its movement of such cars.

9. Maintenance of Track. USX hereby grants Conrail authority, as agent for USX, to solicit bids for and to negotiate a Maintenance Contract with a third party contractor, pursuant to which such Maintenance Contractor shall maintain Industrial Park Track to meet Federal Railroad Administration Class I track conditions permitting freight train operations at ten (10) miles per hour for USX. The Maintenance Contract shall be subject to approval by USX and shall be executed by USX. Conrail, as agent for USX, shall be responsible for the administration of the Maintenance Contract. The Maintenance Contract shall provide for a monthly maintenance fee from Maintenance Contractor to USX. Conrail, as additional consideration for this Agreement, shall be responsible for the payment to the Maintenance Contractor of the fee. The parties agree that Conrail has negotiated and USX has approved and entered into a Maintenance Contract with Trans Inc., T/A Fox Contracting Company, effective January 1, 1998 through December 31, 2002. During the term of this Agreement, the train operator (Conrail or USS Sheet & Tin) shall be responsible for derailments on Joint Use Track. *

10. Railroad/Shipper Relations. The Trunk Lines shall be solely responsible for negotiating suitable commercial arrangements based on common transportation characteristics with Shippers for line-haul, terminal and accessorial freight charges, in order to maintain the competitive attractiveness of the Fairless Industrial Park.

11. Environmental. Conrail shall have no responsibility for pre-existing environmental conditions but will be responsible for environmental conditions arising out of its rail operations.

12. Salvage of Track. Tracks in the Fairless Industrial Park available for use, at Conrail's sole discretion, for salvage for useful materials, or for removal and sale as scrap, shall be identified by the parties, provided however, both salvaged materials and scrap proceeds shall be used, as agreed upon by USX and Conrail, solely for the purpose of maintaining Industrial Park Track and/or constructing additional Industrial Park Track. All railroad ties generated by salvage, removal, maintenance or repair of track shall be disposed of off-site by Conrail in compliance with all applicable laws and regulations. Track within the Fairless Industrial Park shall be restored or upgraded on an as-needed basis in order to meet the transportation requirements of any new shippers located in the Fairless Industrial Park. 

13. Indemnity.

13.1 Conrail, for itself, its successors and assigns, agrees to defend, indemnify and hold harmless USX, USX's successors and assigns, and USX's agents, servants and employees from and against any and all claims, demands, damages, actions or causes of action at law or in equity, together with any and all losses, costs, or expenses and attorneys' fees, in connection therewith or related thereto, asserted by any entity, person or persons, including but not limited to employees of Conrail, for bodily injuries, death or property damage arising or in any manner directly or proximately growing out of the Service governed or controlled by this Agreement. Conrail agrees to fully perform and fulfill its obligations hereunder to defend, indemnify and hold harmless USX, USX's successors and assigns and USX's agents, servants and employees unless the alleged bodily injuries, death or property damage are caused by the sole negligence of USX. For the purpose of administering the indemnity provision in this paragraph 13, bodily injuries, death and/or property damage caused by Conrail's train operations, and/or the maintenance and repair of Industrial Park

Track and/or the Adjoining Area shall be assumed to have been caused in part by Conrail. Conrail's indemnity obligation under this paragraph shall be limited to a maximum of five million dollars (\$5,000,000.00) and proceeds available from insurance coverage required by Article 12 hereunder shall be credited against and are agreed to fully satisfy Conrail's indemnity obligation pursuant to this paragraph.

13.2 In connection with any demands, claims or any other legal proceedings (whether at law or in equity) covered by this Article 13, USX and/or USX's agents, servants and employees retain the right to be represented, at their sole option, by attorneys of their own selection, at their own expense. The exercise of this right to select their own attorneys will in no way detract from or release Conrail from its obligation to indemnify and hold harmless USX and/or USX's agents, servants and employees. The extent of Conrail's indemnity obligation shall not be limited to the amounts of the insurance coverage provided for in Article 14 of this Agreement.

13.3 In the event Conrail defaults on its obligations under this Article 13, Conrail agrees that it will be liable for all reasonable expenses and attorneys' fees incurred by USX to enforce the provisions of this Article.

13.4 Without limiting the above, Conrail hereby agrees to indemnify, defend (with counsel acceptable to USX) and hold harmless USX from and against any and all expense, damage, loss or liability incurred by USX arising from the application or claim of application to the Industrial Park Track of any state or federal oil, toxic, or hazardous substances or waste statute, law, or regulation, now or hereafter enacted (including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq. and any amendments thereto, and any other applicable federal or state environmental statute, law or regulation). Conrail's liability hereunder shall survive the termination of this Agreement whether terminated by an agreement, expiration, judgment, or otherwise, but in no event shall Conrail's liability extend to losses resulting directly from affirmative acts of USX or arising out of any ground water, soil or other environmental contamination that occurred prior to the Commencement Date. If Conrail transports

any hazardous materials on the Industrial Park Track, it shall do so in compliance with all applicable federal and state laws and/or regulations.

14. Insurance.

14.1 Conrail shall maintain and require its Subcontractors, if any, to maintain in full force and effect throughout the entire term of this Agreement, insurance coverage in an insurance company or companies satisfactory to USX and possessing an A.M. Best Company rating of A-, Class VI or better, insuring:) Conrail's obligations under Article 13 of this Agreement.

14.2 Said policies of insurance (i.e., Comprehensive General Liability, Automobile Liability and Umbrella/Excess Liability Policies) shall be endorsed to include USX as an additional insured on a primary and non-contributory basis, and the insurance carrier shall promise to defend USX and/or USX's agents, servants, and employees and provide insurance coverage of not less than Five Million Dollars (\$5,000,000) for personal injury, bodily injury or death arising out of any one occurrence and not less than Five Million Dollars (\$5,000,000) for property damage arising out of any one occurrence. Said Comprehensive and Umbrella/Excess Liability policies shall be endorsed utilizing ISO Form B, CG 20-10 (pre-1993 form) or equivalent language to such Form. If, and to the extent that, the insurance coverage provided by Conrail pursuant to this Article is issued on a combined single limit basis, then said insurance coverage shall provide for not less than a Five Million Dollars (\$5,000,000) combined single limit for personal injury/bodily injury/death/ property damage arising out of any one occurrence, with minimum aggregate limits of not less than Ten Million Dollars (\$10,000,000).

14.3 Said insurance policies shall provide a defense and coverage to USX, as required to satisfy Conrail's obligations pursuant to Article 13.

14.4 The provisions of this Article 14 shall be enforceable and Conrail shall be bound thereby regardless of whether or not the indemnity provisions of Article 14 of this Agreement are determined to be enforceable in the jurisdiction in which the Service covered under this Agreement is performed.

14.5 Conrail shall maintain, and require its subcontractors, if any, to maintain, in full force and effect throughout the entire term of this Agreement, (i) Workers' Compensation Insurance and Federal Employers Liability Act coverage providing compensation for occupational diseases and for injuries sustained by or death resulting to employees of Conrail or its subcontractors, as required by law, including the laws of the Commonwealth of Pennsylvania and (ii) Employer's Liability Insurance and/or Stop Gap Liability coverage with limits of not less than \$1,000,000.00 each accident, \$1,000,000.00 disease-policy limit, and \$1,000,000.00 disease each employee.

14.6 The above described insurance coverage to be provided by Conrail hereunder will extend coverage to all Service or Services performed by Conrail during the term of and governed by this Agreement, including any other contract(s) or purchase order(s) or agreement(s) as provided under this Agreement (whether written or oral) between Conrail and USX.

14.7 (a) Prior to the commencement of any Service or Services on USX's premises, Conrail and all subcontractors, if any, shall furnish to USX satisfactory Certificates of Insurance evidencing full compliance with the requirements of this Article 14. The Certificates of Insurance must show that the above required insurance is in force, the amount of the carrier's liability thereunder, and must further contain the "Cancellation" clause as specified in Article 14.7(b) below. Moreover, the Certificate of Insurance shall affirm that the contractual liability insurance being provided encompasses "broad" form indemnity clauses.

(b) The following clause shall appear in the "Cancellation" section of the Certificates of Insurance:

Should any of the above-described policies be canceled, or should a request be made to delete the certificate holder herein as an additional insured under the policies, the issuing company will, by certified or registered mail, attempt to afford sixty (60) days advance written notice to the certificate holder

herein, prior to effecting any such cancellation, and/or deletion described above.

(c) All Certificates of Insurance shall be in form and content acceptable to USX and shall be submitted to USX pursuant to this Article 14.7(a) in a timely manner so as to maintain Conrail's full compliance with the stated insurance requirements hereunder throughout the entire term or duration of this Agreement. The Additional Insured Endorsement in USX's favor shall contain no broad form restriction or exclusion of coverage based upon USX's fault or negligence, and such endorsement shall provide that the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by USX.

(d) Any failure on the part of USX to pursue or obtain the Certificates of Insurance required hereunder from Conrail and/or the failure of USX to point out any non-compliance of such Certificates of Insurance shall not constitute a waiver of any of the insurance requirements in this Agreement nor relieve Conrail of any of its obligations or liabilities hereunder.

(e) USX shall be entitled to rely on any Certificates of Insurance delivered to it on behalf of, or by Conrail as conclusive evidence that the insurance required hereunder is in effect, and such Certificates shall be deemed to be part of the applicable insurance policies.

14.8 All policies of insurance shall be endorsed whereby the insurer waives any and all rights of subrogation against USX.

14.9 All insurance coverage carried by Conrail shall extend to and protect USX to the full amount of such coverage, and all deductibles and self-insured retentions (if any), including those relating to defense costs, shall be the sole responsibility of Conrail.

14.10 In addition to its other remedies, USX may, at its sole option and without liability to Conrail, suspend the Service and/or exclude Conrail from USX's premises until Conrail furnishes satisfactory evidence of its full compliance with the provisions of this Article 14.

14.11 The obligation of Conrail to provide the insurance herein above specified shall not limit in any way the liability or obligations assumed by Conrail elsewhere in this Agreement, except as set forth in Article 13.1

14.12 In the event Conrail or its insurance carrier defaults on any obligations under this Article 14, Conrail agrees that it will be liable for all reasonable expenses and attorneys fees incurred by USX to enforce the provisions of this Article 15.

14.13 Conrail may choose to self insure instead of purchasing insurance as contemplated herein, provided however, that in such event the protection provided to USX shall be no less than if insurance had been provided as set forth herein.

15. Compliance with Legal Requirements. Conrail covenants throughout the term of this Agreement, at Conrail's sole cost and expense, to comply with all laws and ordinances and notices, orders, rules, regulations and requirements of all federal, state and municipal governments, governing the rail service provided by Conrail hereunder, including (without limitation) all laws relating to railroads, health and safety, and environmental matters, whether foreseen or unforeseen, ordinary as well as extraordinary. Conrail shall likewise observe and comply with the requirements of all policies of public liability, and all other policies of insurance at any time in force with respect to this Agreement.

16. Waiver. The failure of USX or Conrail to insist in any one or more instances upon the performance of any of the covenants or conditions of the Agreement or to exercise any right or privilege herein conferred shall not be construed as thereafter waiving or relinquishing any such covenants, conditions, rights or privileges and the same shall continue and remain in full force and effect, and waiver of one default or right shall not constitute waiver of any other default.

17. Grace Period. Notwithstanding anything hereinabove stated, it is understood and agreed that neither party hereto will exercise any right or remedy.

provided for in the Agreement or allowed by law because of any default of the other, unless such party shall have first given written notice thereof by registered mail to the other, and the other, within a period of thirty (30) days thereafter, shall have failed to pay the sum or sums due if the default consists of the failure to pay money, or if the default consists of something other than the payment of money, shall have failed, within thirty (30) days thereafter to begin and actively and diligently in good faith to proceed with the correction of the default until it shall be fully corrected.

18. Notices. All notices required or permitted hereunder from either of the parties to the other shall be in writing and sent by (1) hand delivery, (2) registered mail, return receipt requested, postage prepaid, (3) overnight delivery service which provides proof of delivery; or (4) telecopy, with a duplicate copy sent via first class mail, addressed as follows:

Notices to Conrail shall be addressed to:

Jonathan M. Broder
General Counsel
Consolidated Rail Corporation
2001 Market Street
Philadelphia, PA 19101-1416
Telephone: 215/209-5020
Telecopy: 215/209-4819

Notices to USX shall be addressed to:

Dennis L. McCartney
USX Realty Development
General Manager-East
20 Steel Road South
Morrisville, PA 19067-3614
Telephone: 215/736-3650/3659
Telecopy: 215/736-3940

Either party may at any time, in the manner set forth for giving notices to the other, set forth a different address to which notice to it shall be sent.

19. Arbitration. USX and Conrail agree that any dispute between them arising from this Agreement will be arbitrated by the American Arbitration Association at their Philadelphia offices and before a single arbitrator.

20. Independent Contractor. The relationship of Conrail to USX under this Agreement shall be solely that of independent contractor. Nothing contained herein shall be deemed to constitute or create a relationship of agency, joint venture, partnership or any relationship other than that as specified herein. Conrail shall be solely responsible for the hiring, discharge and payment of its employees. Conrail shall secure all necessary permits and licenses related to such employment and shall provide for payment of all Workers Compensation and/or FELA obligations, and all taxes and contributions for unemployment insurance, social security, etc. required in the performance by Conrail of service covered by this Agreement. Conrail shall indemnify and save harmless USX from any and all claims for such payments, taxes or contributions.

21. Audit. Conrail shall maintain, in accurate and complete order, books and records related to expenses related to the maintenance and repair of Industrial Park Track and related to the number of cars moved by Conrail for each Shipper each month on Industrial Park Track. Such books and records shall be open to inspection and/or audit by representatives of USX during reasonable business hours during the life of this Agreement and for a period of three years thereafter.

22. Assignability. Neither party shall assign any of its rights and obligations hereunder without the prior written consent of the other party, provided however, Conrail may, without the consent of USX, assign to any successor in interest to Conrail's line haul rail operations at Fairless, and USX may assign, in whole or in part,

without the consent of Conrail, to any successor in interest to USX's ownership interest in the Fairless Industrial Park.

23. Severability. If any provision of this Agreement is found invalid, the remainder of this Agreement shall stay in full force and effect.

24. Captions. It is agreed that the captions of the Agreement are for convenience only and are not a part of the Agreement and do not in any way limit or amplify the terms and provisions of the Agreement.

25. Governing Law. This Agreement shall be governed and construed in accord with the laws of the Commonwealth of Pennsylvania, excluding its conflict of laws provisions.

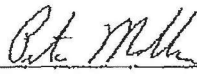
26. Confidentiality. USX and Conrail shall use all reasonable efforts to maintain the confidentiality of the specific terms and conditions of this Agreement.

27. Entire Agreement. It is expressly understood and agreed by and between the parties hereto that this Agreement, and the exhibits attached hereto or incorporated herein by reference, set forth all the promises, agreements, conditions and understandings between USX and Conrail with respect to the Conrail's operations on the Industrial Park Tracks and the Joint Use Tracks, and that there are no promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. On the effective date of this Agreement, all prior agreements between the parties concerning the subject matter hereof, including, but not limited to, the Rail Operating Service Agreement, dated December 21, 1997, ("Prior Agreement") shall be cancelled. Notwithstanding such cancellation, all warranties in the Prior Agreement and any unsatisfied obligation under the Prior Agreement shall survive such cancellation. It is further understood and agreed that no subsequent alteration,

amendment, change or addition to this Agreement shall be binding upon USX or Conrail unless reduced to writing and signed by them.

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

USX CORPORATION

By: 
Title: Peter Moller, President
USX Realty Development
A Division of U. S. Steel Group

CONSOLIDATED RAIL CORPORATION

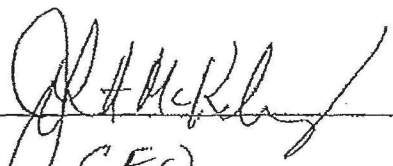
By: 
Title: CFO

EXHIBIT A

Exhibit A is an oversize drawing, numbered FS-26, dated June 1, 1999 and entitled "Overall Plan of Fairless Works", which has been initiated and exchanged by the parties and which is incorporated herein by reference.

EXHIBIT B

Exhibit B is an oversize drawing, numbered SK279, last revised October 15, 1985, and entitled "Fairless Works Railroad Track and Roadway Identification Map", which has been initialed and exchanged by the parties and which is incorporated herein by reference

EXHIBIT C

Sample Lease Provision

Pages 1, 2 and 27 from the October 15, 1991 lease between USX Corporation and Laclede Steel Company are attached as Exhibit C.

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forth and designated as the Pipe Mill Access Rights on Exhibit A hereto and the non-exclusive licenses and rights-of-way for rail access, staging and railcar storage relating to the Pipe Mill as set forth and designated as the Pipe Mill Rail Rights on Exhibit A hereto (the Pipe Mill Access Rights and the Pipe Mill Rail Rights are herein sometimes collectively called the "Ancillary Rights"). The Ancillary Rights of Tenant are subject to the following:

(a) Landlord shall maintain and repair the roads and railroad tracks relating to the Ancillary Rights, but Landlord and Tenant shall share in the cost of such maintenance and repair in proportion to each party's share of the total amount of use thereof made by Landlord, Tenant, and any other "rightful user", hereinafter defined in (d). Landlord shall invoice Tenant monthly for Tenant's share of all such costs and Tenant shall pay to Landlord all such invoiced amounts within twenty (20) days of receipt of such invoice from Landlord.

(b) Landlord reserves the right, at Landlord's sole cost and expense, to relocate, move, substitute for or otherwise change the location of any of the Ancillary Rights, to such new location as may be designated by Landlord, provided that the location of Tenant's new Ancillary Rights provides Tenant with access rights comparable to the original Ancillary Rights. Upon any such designation of a new location and upon completion of such relocation, all rights, title and interest created by this lease in and to the old location shall automatically terminate and vest in Landlord without demand or reentry by Landlord. Any such new location for any of the Ancillary Rights shall likewise be subject to all the terms and provisions of this Lease including the provisions of this subparagraph (b).

(c) Landlord reserves the right, at Landlord's sole cost and expense, to cause all or part of the Pipe Mill Access Rights to be dedicated to a governmental unit as a public road. Upon such dedication, Landlord shall have no further responsibility for the condition or maintenance of any portion of the Pipe Mill Access Rights dedicated as a public road.

(d) Tenant's rights hereunder are subject to rights of other tenants and occupants at Fairless Works and to Landlord's rights and those of its agents, assignees, carriers, contractors and all other persons lawfully using the Ancillary Rights, herein called "rightful user".

(e) Landlord and Tenant may create additional Ancillary Rights in accordance with Section 10.03 which additional Ancillary Rights shall be governed by this Section 1.02.

20.10. Interpretation

This Lease shall be governed by the Laws of the Commonwealth of Pennsylvania and all terms and covenants shall be interpreted in accordance therewith.

IN WITNESS WHEREOF, Landlord and Tenant have signed and sealed this Lease.

LANDLORD:
USX CORPORATION

By *R. J. Wilkins*

TENANT:
LACLEDE STEEL COMPANY

By *John B. McKinney*

President

EXHIBIT D

CONTRACT NUMBER **335860**

SIDETRACK AGREEMENT

THIS AGREEMENT ("Agreement"), made and effective as of 10/14, 2012 by and between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation, 2001 Market Street, Philadelphia, Pennsylvania 19103 ("Conrail"), and B & J GROUP having offices at 1001 NEW FORD MILL ROAD, MORRISVILLE, PA 19067 ("Industry").

WHEREAS, Industry has requested or has in place track facilities at MORRISVILLE, BUCKS COUNTY, PA, described as follows:

An existing industrial sidetrack with a point of switch located at USX INDUSTRIAL PARK RC TRACK OFF CONRAIL'S FAIRLESS BRANCH, 10-0323, Milepost 7.35, in accordance with Plan No. CR21, dated 12/10/2012, attached as "Exhibit A," such track facilities and the underlying right-of-way being collectively referred to as the "Sidetrack", and

WHEREAS, the parties desire to establish, the terms and conditions relating to the construction, use, maintenance and operation over the Sidetrack.

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

Section 1. Term

1.1 This Agreement shall continue in force until terminated by either party, with or without cause, on thirty (30) days' prior written notice to the other party. In the event Conrail is unable to locate Industry, such notice may be posted on or near the Sidetrack, and this Agreement shall terminate thirty (30) days after such posting. If Conrail, in accordance with applicable law, abandons or otherwise discontinues service over the rail line that connects with the Sidetrack, this Agreement shall terminate automatically on the effective date of any such abandonment or discontinuance. Any obligation assumed and any liability which may have arisen or been incurred by either party shall survive termination of this Agreement.

1.2 Upon termination of this Agreement, Conrail shall have the right, but not the obligation, to remove the switch connection and any portion or all of the Sidetrack on its property and to enter upon property leased to or owned, controlled or maintained by Industry and remove any and all material owned by Conrail.

1.3 Until terminated, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns, but Industry shall not assign or otherwise transfer this Agreement without the written consent of Conrail.

CONTRACT NUMBER **335860****Section 2. Construction and Maintenance**

2.1 Industry, at its sole cost and expense, shall:

- (i) Provide all necessary right-of-way beyond Conrail's property line (point B as shown on Exhibit A);
- (ii) Comply with all requirements of, and obtain all consents required by, public authorities regarding the Sidetrack;
- (iii) Erect and maintain fences and highway-railroad grade crossing protection devices required by public authorities, and
- (iv) Keep the Sidetrack free of all hazardous materials and obstructions and, as necessary, repair, maintain, replace, renew and remove the portion of the Sidetrack located beyond Conrail's property line (point B as shown on Exhibit A) so as to safely accommodate all railcars shipped or received by Industry.

2.2 Conrail shall perform the following:

- (i) Maintain that portion of the Sidetrack located between points A and B, about 94 feet, as shown on Exhibit A.

2.3 The Sidetrack shall be maintained to a minimum of Federal Railroad Administration Class 1 Track Standards. Notwithstanding any provision of Section 2.1, Industry shall pay a maintenance charge to Conrail for maintaining the industrial switch connection on Conrail property. The charge for maintaining each industrial switch connection (the "annual maintenance charge") is \$3,500 per year. This charge is payable by Industry within thirty (30) days of the invoice date in each year invoiced. Invoices for the Annual Maintenance charge will be issued in the year subsequent to the calendar year for which the charge applies. The charge will not apply to any calendar year in which the Sidetrack originates or terminates seven or more carloads. The charge will not apply to a calendar year (and any subsequent calendar years) if Industry, by June 30th of that year, requests that Conrail remove the industrial switch connection, provided, however, that should Industry, during any calendar year, ship or receive railcars over the sidetrack subsequent to requesting the removal of the industrial switch connection, the annual maintenance charge will apply to each calendar year the Sidetrack does not originate or terminate seven or more carloads.

Conrail may, at its discretion, from time to time, adjust the Annual Maintenance Charge. Any adjustment shall be based on the percentage increase in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)(1967=100)" specified for "All Items-United States" (the "Index") and shall be calculated by increasing the current Annual Maintenance Charge by the cumulative percentage change in the Index between: (a) the later of the year this Agreement takes effect or the year of the last adjustment and (b) the year immediately proceeding the year in which any adjustment is made. In no event, however, shall the Annual Maintenance Charge be less than \$3,500. In the event the Index shall be converted to a different

CONTRACT NUMBER **335860**

standard reference base or otherwise revised, the determination of the percentage change shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish same, then as shall be reasonably determined by Conrail.

2.4 The parties recognize that some public authorities may not have jurisdiction over Industry as to clearances, bridges or highway-railroad crossings affecting the Sidetrack and such bodies may direct Conrail to take actions regarding such matters. Any expense incurred by Conrail in complying with such directions shall be billed to Industry, which shall reimburse Conrail. This Section 2.4 shall survive termination of this Agreement.

Section 3. Ownership

The rails, ties and fittings in the Sidetrack shall be owned as follows:

- (i) That portion of the Sidetrack located between the point of switch and the Conrail property line, which is located between points A and B, about 94 feet, as shown on Exhibit A, shall be owned by Conrail;
- (ii) That portion of the Sidetrack beyond Conrail's property line (point B as shown on Exhibit A) shall be owned by the Industry.

Section 4. Use

4.1 Conrail shall have the right to use the Sidetrack but may not unreasonably interfere with the use thereof by Industry.

4.2 Neither party hereto shall permit or authorize the use of the Sidetrack by, or for the benefit of, any other person, firm or corporation not a party hereto without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the preceding sentence, Conrail retains the right to construct and use additional switch connections on that portion of the Sidetrack located on Conrail's property when such additional switch connections may be necessary in the conduct of its business.

4.3 The parties shall comply with: (i) all applicable federal, state, and local laws, rules, regulations or orders pertaining to shipments originating or terminating on the Sidetrack, and (ii) Conrail's Technical Specifications for Industrial Sidetrack.

4.4 Industry shall not grant or otherwise authorize any rights to establish vehicular or pedestrian grade crossings over the Sidetrack without the prior, written consent of Conrail.

4.5 Conrail may enter upon Industry's property for the purpose of inspecting, repairing or operating over the Sidetrack, but Conrail shall have no duty or obligation to engage in such activities.

CONTRACT NUMBER **335860****Section 5. Changes**

Industry shall not make any changes in the Sidetrack without the prior, written consent of Conrail. Changes in the Sidetrack necessary to comply with the requirements of a public authority shall, following receipt of written notice from Conrail, be made by Industry at its sole expense. If Conrail incurs any expense(s) in connection with any such change, such expense(s) shall be billed to Industry, which shall reimburse Conrail.

Section 6. Clearances

Industry shall not construct or permit any obstruction over the Sidetrack less than the statutory limit or 23' above top of rail, whichever is greater, or alongside thereof less than the statutory limit or 8'6" from center of track, whichever is greater (and with the necessary additional clearances on curves), without the prior written approval of Conrail and any public authority having jurisdiction. Such minimum clearances may be changed by Conrail to meet legal requirements and Industry shall, at its sole expense, upon notice from Conrail, make such changes in the Sidetrack as may be necessary.

Section 7. Hazardous Materials

7.1 The following provisions apply when the Sidetrack is used for the delivery or tender of any dangerous flammable explosive or hazardous commodity (hereinafter "Hazardous Materials"), as determined by the U.S. Department of Transportation under the Hazardous Materials Transportation Act (49 U.S.C. §§ 5101 *et seq.*) and the Hazardous Materials Regulations (49 C.F.R. Parts 171-180) issued thereunder, as amended from time to time.

7.2 No Hazardous Materials shall be placed: (a) on the Sidetrack (except railcar shipments); (b) within the clearance requirements set forth in this Agreement, or (c) within one hundred (100) feet of Railroad's connecting mainline track.

7.3 Industry shall comply with all recommended practices of the Association of American Railroads and all federal, state and local governmental requirements (hereinafter "Governmental Requirements") regarding the loading, unloading, possession, transfer and/or storage of Hazardous Materials, including, but not limited to, the installation and use of pollution abatement and control structures and other equipment that is prudent or required under such practices and/or Governmental Requirements.

7.4 In the event of a Hazardous Materials leak, spill, or release, Industry shall immediately notify the appropriate Governmental Response Center and Conrail's Operations Department and, at its sole expense, shall take all appropriate steps to clean, neutralize and remove the leak, spill or release.

CONTRACT NUMBER **335860****Section 8. Liability**

8.1 Except as otherwise provided in Section 8.2 and Section 8.3, responsibility for "Claims" (as defined in Section 8.6) as between the parties shall be borne as follows:

- (i) Conrail shall be responsible for Claims arising from Conrail's and its directors', officers', employees', agents', contractors', or subsidiaries' negligence, and from Conrail's failure to comply with its obligations under this Agreement when such failure is a contributing cause to such Claims;
- (ii) Industry shall be responsible for Claims arising from Industry's and its directors', officers', employees', agents', contractors', or subsidiaries' negligence, and from Industry's failure to comply with its obligations under this Agreement when such failure is a contributing cause to such Claims;
- (iii) The parties shall share in proportion to their respective degrees of responsibility for all Claims arising from their and their directors', officers', employees', agents', contractors', or subsidiaries' joint or concurring negligence or failure to comply with their respective obligations under this Agreement when any such failure is a contributing cause to such Claims. If Conrail is subjected to any Claims under the Federal Employers' Liability Act ("FELA") based on the allegation that Conrail failed, in respect to the portion of the Sidetrack leased to or owned, controlled or maintained by Industry, to provide a safe place to work or failed to correct or guard against an unsafe condition, the standards of negligence and causality established by FELA shall be applied in determining whether such Claims arose from the individual, joint or concurring negligence of Industry and its directors, officers, employees, agents, subsidiaries and contractors;
- (iv) Each party shall be responsible for Claims arising from the presence of trespassers, vandals or other unauthorized persons on the portion of the Sidetrack leased to or owned, controlled or maintained by it.

8.2 Except where Claims result from Conrail's reckless or willful and wanton misconduct, Industry shall be solely responsible for Claims arising from any nonstandard conditions, irrespective of any negligence on the part of Conrail, including, but not limited to, the following nonstandard conditions, regardless of whether such conditions are in existence on the effective date of this Agreement or come into existence at any time thereafter:

- (i) Horizontal track curvature(s) in excess of 12° 30', and Conrail will not be responsible for the inability of the sidetrack to handle rail equipment of an existing or future design;

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- (ii) Horizontal clearance(s) less than those permitted under this Agreement, and
- (iii) Vertical clearance(s) less than those permitted under this Agreement.

8.3 Irrespective of the sole, joint or concurring ordinary or gross negligence on the part of Conrail, Industry shall be solely liable for Claims arising from:

- (i) The failure of Industry to maintain properly, and in accordance with the terms of this Agreement, the portion of the Sidetrack leased to or owned, controlled or maintained by Industry (as defined in Section 3(ii) and shown on Exhibit A), and
- (ii) The explosion, spillage and/or presence of Hazardous Materials on Industry's property, facility or the portion of the Sidetrack leased to or owned, controlled or maintained by Industry, but only to the extent the damages related to such Claims would not have occurred but for the dangerous nature of the Hazardous Materials.

8.4 The negligence of any tenant, invitee, licensee or grantee of Industry occurring on property leased to or owned, controlled or maintained by Industry shall be deemed the negligence of Industry. For purposes of this Section 8.4, Conrail shall not be considered to be a tenant, invitee, licensee or grantee of Industry.

8.5 Except as otherwise provided in Section 8.1, the party which is responsible for any claim shall release the other party from all responsibility for such Claims and shall defend, indemnify, protect, and save harmless the other party and its directors, officers, agents, and employees from and against all such Claims. Industry and Conrail waive any constitutional, statutory or decisional immunity which would invalidate Industry's or Conrail's obligation to indemnify the other party with respect to Claims asserted by employees of Industry and Conrail.

8.6 The word "Claims" as used in this Section 8 shall mean all claims, liabilities, demands, actions at law and equity, judgments, settlements, losses, damages, costs and expenses of every character (including, without limitation, attorneys' fees) for any injury to or death of any person or persons, for any damage to or loss or destruction of property of any kind, including, but not limited to, car repair, re-railing and track repair costs, and for any damage to the environment, caused by, arising out of or occurring in connection with the construction, use, maintenance, replacement, presence or removal of the Sidetrack. Except as may otherwise be specifically set forth in this Agreement, neither party shall be liable for consequential damages under this Agreement.

CONTRACT NUMBER **335860**

Section 9. Discontinuance

Conrail shall not be responsible for any loss or damage sustained by Industry as a consequence of any temporary or permanent elimination of the Sidetrack, or service thereon, due to circumstances beyond Conrail's reasonable control. Conrail may suspend rail service in the event Industry breaches any of the covenants in this Agreement, and such suspension may continue until such breach is remedied.

Section 10. Payment

10.1 All payments called for under this Agreement shall be made by Industry within thirty (30) days after receipt of bills. The records of Industry relating to payments due under this Agreement shall be open for inspection by Conrail at all reasonable business hours.

10.2 Except for payments required by Sections 2.3 and 10.4, all bills rendered by Conrail shall include direct labor and material costs, together with surcharges for fringe benefits, overheads, material handling costs, and equipment rentals at rates specified by Conrail.

10.3 If Conrail performs any work or satisfies any responsibility or liability which under this Agreement Industry is obligated to perform or satisfy, Industry shall reimburse Conrail for all costs and expenses in accordance with this Section.

10.4 In the event of a derailment of any rail car(s) or locomotive(s) on a portion of the Sidetrack owned and maintained by Industry, Conrail, in the exercise of its sole discretion, may provide re-railing and related services ("re-railing services") or require Industry to provide such services. In the event Conrail elects to provide re-railing services, the minimum charge for such services will be \$3,500.

Section 11. General Provisions

11.1 A determination that any term, covenant, obligation or condition of this Agreement is invalid or unenforceable to any extent shall not affect the validity or enforceability of any other part of this Agreement.

11.2 This Agreement shall be governed by the laws of the state in which the Sidetrack is located.

11.3 This Agreement is for the exclusive benefit of the parties and not for the benefit of any other party. Nothing contained in this Agreement shall be construed as conferring upon any other party the rights of a third party beneficiary or any right of such other party to recover by way of damages or otherwise against Conrail or Industry.

11.4 The headings in each section of this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

CONTRACT NUMBER **335860**

11.5 This Agreement contains the entire agreement of the parties and supersedes any prior written or oral understandings, agreements or representations of any kind between the parties.

11.6 The terms, conditions and provisions of this Agreement may not be changed, modified, amended, waived or discharged except by an instrument in writing signed by the parties hereto.

11.7 All words, terms, and phrases used in this Agreement shall be construed in accordance with their generally applicable meaning in the railroad industry.

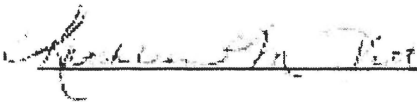
11.8 The provisions of any exhibit or addendum to this Agreement shall be deemed a part hereof.

11.9 Every notice, approval, consent or other communication desired or required under this Agreement shall be effective only if the same shall be in writing and sent postage prepaid by overnight courier or United States registered or certified mail (or a similar mail service available at the time), and when directed to Conrail, it shall be addressed to Senior Vice President-Operations, Consolidated Rail Corporation, 1000 Howard Blvd., Mt. Laurel, NJ 08054, and when directed to Industry, it shall be sent to the address listed for Industry in the preamble of this Agreement.

11.10 As of its effective date, this Agreement replaces and supercedes any and all prior agreements governing the construction, use, maintenance and operation over the Sidetrack, provided, however, that any liabilities between the parties arising before the effective date of this Agreement shall be governed by such prior agreements.

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

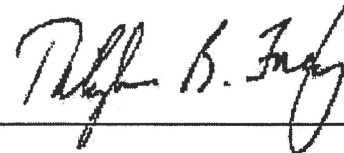
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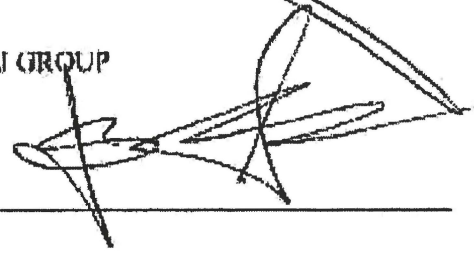
CONSOLIDATED RAIL CORPORATION

By: 

WITNESS:



B & J GROUP

By: 

335880

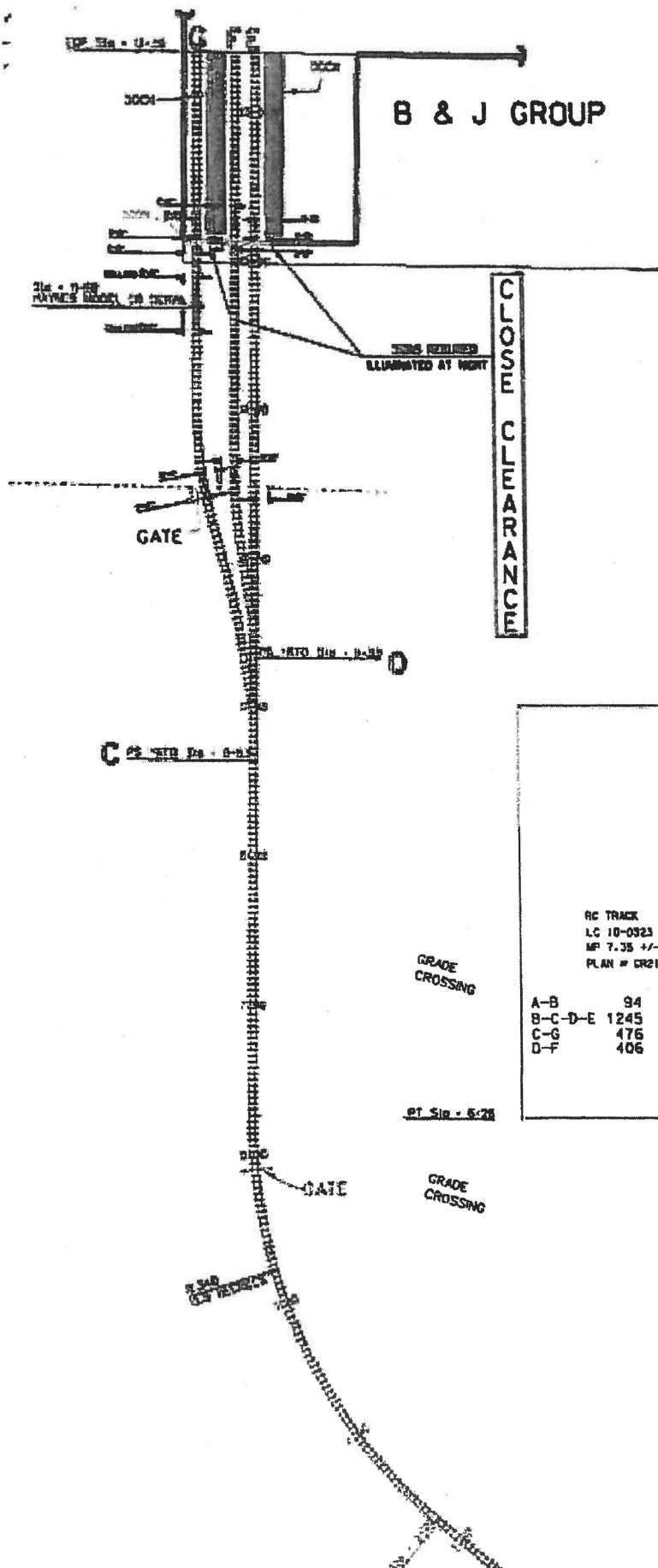


EXHIBIT "A"

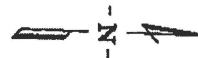
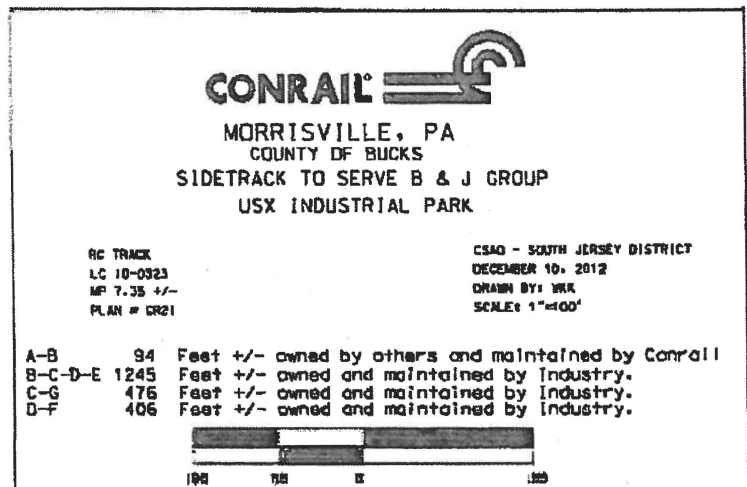


EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CSX Transportation, Inc.

Plaintiff,

v.

B&J Group, Inc.

Defendant.

CASE NO: 2:17-CV-05296-CMR

**CSX TRANSPORTATION, INC.'S
STATEMENT OF FACTS IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

CSX Transportation, Inc. (“CSX”) submits that there is no genuine dispute as to the following material facts, and that CSX is therefore entitled to summary judgment as a matter of law.

PARTIES

1. CSX is an interstate rail carrier subject to the jurisdiction of the Surface Transportation Board. ECF No. 1 at ¶ 1.

2. B&J Group, Inc. (“B&J Group”), is an entity that operates a public warehouse in Morrisville, Pennsylvania, acting as a rail interface on behalf its customers including Total Petrochemical and Arkema. *See* Fleischman Dep. at 14:8-24, November 9, 2018 true and correct copies of the relevant excerpts of which are attached as Exhibit A; *See* screen shots from B&J Group’s website <http://www.bandjgroup.com/>, last visited April 19, 2019, true and correct copies of which are attached as Exhibit B.

3. Conrail is a switching carrier owned jointly by Norfolk Southern and CSX Transportation, Inc. (“CSX”) and when it delivers rail cars, it does so exclusively as an agent of those entities. *See* Clark Dep. at 12:6-9, 14:18-19, 43:12-17, November 8, 2018 true and correct copies of the relevant excerpts of which are attached as Exhibit C; *See* LaGuardia Dep. at 8:18-22, 10:13-14 November 8, 2018 true and correct copies of the relevant excerpts of which are attached as Exhibit D.

4. Conrail operations are conducted in areas known as the Shared Assets Areas (“SAA”). *See* Earnest Clark Declaration at ¶16 a true and correct copy of which is attached as Exhibit E.

DELIVERY OF RAIL CARS TO B&J GROUP

5. B&J Group’s receives rail service at its warehouse from Consolidated Rail Corporation (“Conrail”). *See* Fleischman Dep. at 24:12-17; *see* Ex. E. Clark Declaration at ¶¶17, 20.

6. All of the rail cars in this litigation were destined for B&J Group and delivered by CSX to a rail-serving yard known as the Morrisville Yard. Ex. E. Clark Declaration at ¶13; *see* CSX’s Car Movement Records true and correct copies of which are attached as Exhibit F; Declaration of Julie LaGuardia of CSX a true and correct copy of which is attached as Exhibit G at ¶¶ 28-29.

7. When the rail cars arrive at the Morrisville Yard, a “constructive placement” notification is issued to B&J Group via CSX’s online system, ShipCSX.com, which notifies B&J Group that rail cars are available for ordering and placement at its facility. Ex. G LaGuardia Declaration at ¶¶28-29 and ¶34; *see* Ex. F Car Movement Records; *see* CSX’s Constructive

Placement Notifications from January 2, 2015- April 13, 2016 true and correct copies of which are attached as Exhibit H.

8. Once the rail cars are delivered to the Morrisville Yard, Conrail sometimes moves rail cars that are under constructive placement to a second nearby serving yard known as the Fairless Yard. Ex. E Declaration of Clark at ¶15.

9. B&J Group is served from one of two rail serving yards known as the Morrisville and Fairless Yard respectively (the “Rail Serving Yards”). *see* Ex. E Declaration of Clark at ¶17.

10. The Rail Serving Yards are located in the Philadelphia/South Jersey SAA. Ex. E Declaration of Clark at ¶16.

11. Conrail moves rail cars between the Rail Serving Yards to alleviate congestion. *See* Ex. E Declaration of Clark at ¶15.

12. From January 1, 2015 through April 12, 2016 B&J Group elected to receive and was sent, constructive placement notifications to its email address, which is tedf@bandjgroups.com. Ex. G LaGuardia Declaration at ¶34; *see* Frey Dep. 8:7-9 November 9, 2018 true and correct copies of the relevant excerpts of which are attached as Exhibit I; *see* Ex. H Constructive Placement Notifications.

13. In addition to receiving email notifications from January 1, 2015 through April 12, 2016, B&J Group also received constructive placement notifications via ShipCSX for all of the rail cars in this litigation. *See* Ex. G LaGuardia Declaration at ¶¶28-29; *See* Ex. F Car Movement Records.

14. Once B&J Group was sent a constructive placement notification, the rail car was considered to be under constructive placement or “notified”. *See* Ex. G LaGuardia Declaration at ¶ 36.

15. B&J Group had access to the records of car movement events and constructive placement notifications at all relevant times through ShipCSX, and they show the dates and time when cars arrived at Morrisville. They also show the dates and times that the cars were: (a) constructively placed, (b) ordered for placement, (c) actually placed at B&J Group's facility, and (d) released. *See* Ex. F Car Movement Records; *see* Ex. G LaGuardia Declaration at ¶¶30-33 and ¶35; *see* Ex. H Constructive Placement Notifications.

16. B&J Group is a closed gate facility, such that it must request that the cars be placed at its facility ("Order") before the rail cars can be delivered to B&J Group. Ex. D LaGuardia Dep. at 94:1-3; Ex. C Clark Dep. at 11:23-12:1; Ex. I Frey Dep. at 14:7-15; *see* Ex. A Fleischman Dep. at 22:25-23:6; Ex. E Declaration of Clark at ¶19; Ex. G LaGuardia Declaration at ¶37.

17. B&J Group Ordered all of the rail cars by calling or emailing Conrail. *See* Ex. I Frey Dep at 10:16-23.

18. Once CSX receives notice that a rail car has been Ordered, CSX's switch carrier, Conrail, will provide the switching services moving the rail cars from the Morrisville Yard or Fairless Yard to B&J Group's facility. Ex. E Declaration of Clark at ¶20.

19. The respective bill of lading for each car destined to B&J Group identifies CSX or Norfolk Southern as the carriers. *See* Ex. I Frey Dep at 13:2-8.

20. However, Conrail is never identified on a bill of lading for a rail car destined to B&J Group as it only provides switching services on behalf of CSX or Norfolk Southern. Ex. I Frey Dep. at 13:16-18; Ex. E Declaration of Clark at ¶14.

B&J GROUP OPERATIONS

21. Ted Frey is B&J Group's Chief Operating Officer and is responsible for all external operations including logistics and the tracking and tracing of rail cars that are being shipped to

B&J Group from its customers and delivered to B&J Group's facility including the transportation of the rail cars to the Morrisville Yard or Fairless Yard, and from those yards to B&J Group's facility. *See* Ex. I Frey Dep at 6:16-22, 10:5-15; *see* Fleishman Dep at 16:8-11; 20:13-16.

22. B&J Group had, and has, the ability to track and trace rail cars via ShipCSX. *See* Ex. I Frey Dep at 17:3-6; *see* Ex. G LaGuardia Declaration at ¶39.

23. Mr. Frey is the only employee of B&J Group that has a sign-on for ShipCSX. *See* Ex. I Frey Dep at 17:22-18:3; *see* Ex. A Fleischman Dep. At 46:18-47:2; *see* Ex. G LaGuardia Declaration at ¶17.

24. Mr. Frey's email address, tedf@bandjgroups.com, is the only email address associated with that sign-on. *See* Ex. I Frey Dep. at 8:7-9, 17:22-18:3; *see* Ex. A Fleischman Dep. at 46:18-47:2; *see* Ex. G LaGuardia Declaration at ¶17.

25. Despite have the ability and access to do so, Mr. Frey never tracked or traced the rail cars in this litigation. *See* Ex. I Frey Dep. 10:8-15.

26. Instead, Frey would put information B&J Group received from his clients regarding the rail cars into a file and not do anything until he thought the rail cars were available for delivery, effectively using the rail cars as storage. *See* Ex. I Frey Dep. At 10:8-12.

DEMURRAGE CHARGES

27. As an interstate rail carrier, CSX is required to promulgate rules for the assessment and collection of demurrage.¹ The rules for the accrual of demurrage are set forth in CSX's

¹Demurrage is a charge, which railroads are statutorily required to assess to alleviate congestion within the rail network, compensates rail carriers for the expenses incurred when rail cars are detained beyond a specified period of time for loading or unloading, and serves as a penalty for undue car detention to encourage the efficient use of rail cars in the rail network. *See* 49 C.F.R. § 1333.1; *see also* Ex. G LaGuardia Declaration at ¶ 6.

demurrage tariff CSXT 8100. *See* a true and correct copy of the July 15, 2014 CSXT 8100 attached as Exhibit J; Ex. G LaGuardia Declaration at ¶ 6.

28. Beginning on July 15, 2014, CSX issued periodic updates to CSX tariff 8100. *See* true and correct copies of CSX Tariff 8100 from January 2015 through January 2018 attached as Exhibit K.

29. Notice of CSX's tariff as well as the updates to the tariff were sent to the email address for B&J Group tedf@bandjgroups.com. *See* an exemplar of CSX's notice of tariff email a true and correct copy of which is attached as Exhibit L, all notices have been produced in this litigation and can be produced to the Court upon request; *see* Email produced by B&J Group addressed to tedf@bnjgroups.com and sent on April 2, 2104 notifying B&J Group of changes to CSX's Tariff 8100 a true and correct copy of which is produced as Exhibit M.

30. CSX Tariff 8100 also incorporates CSX Tariff 4049, which governs the transportation of hazardous materials. Ex. J July 2014 CSXT 8100 at §1.1.3; Ex. K January 2015-January 2018 CSXT 8100 at §1.1.3; *See* true and correct copies of CSX Tariff 4049 from April 2014 thru December 2016 attached as Exhibit N.

31. CSX Tariff 8100 and the provisions of CSX Tariff 4049 ("the Tariffs") set forth CSX's rules governing the accrual of demurrage. *See* Ex. J July 2014 CSXT 8100 at §§ 2 and 9; *see* Ex. K January 2015-January 2018 CSXT 8100 at §§ 2 and 9; *see* Ex. N April 2014 - December 2016 CSXT 4049 at Article II and Article V.

32. CSX's Tariffs separate demurrage charges into two categories "demurrage" for railroad owned cars and "private car storage" for privately owned cars. *See* Ex. J July 2014 CSXT 8100 at § 2; *see* Ex. K January 2015-January 2018 CSXT 8100 at § 2; *see* Ex. N April 2014 - December 2016 CSXT4049 at Article V.

33. The rail cars that accrued the demurrage charges at issue in this litigation were all identified as containing hazardous materials by B&J Group or its customers. *See* Ex. G LaGuardia Declaration at ¶ 40.²

34. Demurrage is calculated pursuant to § 2 of CSX tariff 8100 and the non-conflicting provisions of Article V of CSX Tariff 4049, which can be broken down as follows:

- a. Customers have a chargeable “debit day” for each day the rail car is constructively placed on railroad owned or controlled track until the customer orders the rail car to be delivered to its facility.
- b. CSX automatically provides customers a “free day”, called a “credit day”, for the customer to order loaded cars holding hazardous materials in for placement and unloading before incurring Demurrage.
- c. At the end of each month, the number of debit days and number of credit days for cars placed at a specific location are totaled. If the customer has more debit days than credit days, it will incur demurrage at a specified daily rate—here, \$150 until June of 2015, \$175 per day from June 2015 until January 2018 and then \$250 thereafter. If the customer has more credit days than debit days, there is no demurrage liability. *See* Ex. J July 2014 CSXT 8100 at § 2; *see* Ex. K January 2015-January 2018 CSXT 8100 at § 2; *see* Ex. N April 2014 - December 2016 CSXT4049 at Article V.

35. CSX submitted invoices to B&J Group for the demurrage charges (the “Demurrage Invoices”) that B&J Group accrued, which remain unpaid. Ex. G Declaration of LaGuardia at

² If a STCC code is provided that is between 4800000 and 4999999, the material in the rail cars is certified as hazardous. *see* Ex. E Clark Declaration at ¶9

¶¶10-13 and ¶¶18-21.; *see* Copies of the Demurrage Invoices submitted to B&J Group True and correct copies of which are attached as Exhibit O.

36. The Demurrage Invoices contain a “DESCRIPTION OF SERVICES” which reflect the date the rail cars arrived at the Morrisville yard (ARRIVED), when a constructively placement notification was sent to B&J Group (NOTIFY), the date B&J Group ordered the rail car for placement at its facility (ORDERED), the date the rail car was placed at B&J Group’s facility(PLACED), the date B&J Group released the rail car and the date the rail car was removed from B&J Group’s facility. *See* Ex. O Demurrage Invoices; Ex. G Declaration of LaGuardia at ¶25.

37. The rail cars identified in the DESCRIPTION OF SERVICES are private rail cars that CSX transported and delivered or caused to be delivered to B&J Group. Ex. G Declaration of LaGuardia at ¶38; *See* Ex. O Demurrage Invoices.

38. B&J Group is unable to challenge that it received delivery of the rail cars or challenge the dates provided in the Demurrage Invoices. *See* Ex. I Frey Dep. at 19:4-21:9; *see* Ex. A Fleischman Dep. at 29:7-31:15,35:3-38:6.

39. B&J Group did not maintain any records related to the delivery of the rail cars including the invoices. *Id.*

40. B&J Group did not retain the Demurrage Invoices sent to its attention suggesting that it did not believe the Demurrage Invoices pertained to them even though B&J Group was identified on each invoice. Instead of disputing the invoice per the terms of the governing tariff, B&J Group would “just ignore it and threw it away”. *See* Ex. A Fleischman Dep. at 30:24-31:9.

41. Despite having access to the Demurrage Invoices and the ability to dispute those Demurrage Invoices via ShipCSX, B&J Group never even attempted to review any invoices on

ShipCSX and has never disputed any invoices on ShipCSX. *See* Ex. G Declaration of LaGuardia at ¶39; *See* Ex. I Frey Dep. at 17:10-12, 17:16-21.

42. B&J Group did not dispute any of the Demurrage Invoices via ShipCSX. Instead, B&J Group's only dispute regarding the Demurrage Invoices is that B&J Group's customers should be responsible for the demurrage, not B&J Group. B&J Group also contends that the track where the rail cars were located is controlled by Conrail not CSX. *See* Ex. A Fleischman Dep. at 38:23-39:3; *see* Ex. I Frey Dep. at 17:16-21; *see* Email correspondence between B&J Group and CSX where B&J Group disputes the charges as its customer is responsible and CSX replies identifying that the entity receiving the rail cars is responsible a true and correct copy of which is attached as Exhibit P.

MANUAL BILL OF LADING CHARGES

43. Shipping instructions are information provided to a rail carrier to transport a rail car from an origin point to a destination point. *See* Ex. J July 2014 CSXT 8100 at § 1.2; *see* Ex. K January 2015-January 2018 CSXT 8100 at § 1.2.

44. CSX requires that shipping instructions be provided via its web portal ShipCSX or through a previously agreed-upon means of electronic data interchange. *Id.*

45. In addition to its responsibility to timely order in rail cars, B&J Group is required by its customers to send reverse routing shipping instructions on some of the rail cars it receives.³ *See* Ex. A Fleischman Dep. at 32:1-3.

46. In 2014, CSX notified B&J Group that B&J Group would be charge for submitting empty reverse route billing if instructions were not submitted via ShipCSX. *See* Fleischman Dep.

³ Reverse routing shipping instructions are shipping instructions submitted to a rail carrier to return an empty rail car to its original location.

at 32:4-15; *see* Email from CSX notifying B&J Group it would be responsible for charges stemming from submitting empty reverse route billing via fax and not ShipCSX a true and correct copy of which is attached as Ex. Q.; *see Also* Ex. J July 2014 CSXT 8100 at § 1.2; *see Also* Ex. K January 2015-January 2018 CSXT 8100 at § 1.2. B&J Group ignored the 2014 email from CSX and kept faxing or emailing shipping instruction accruing the applicable manual bill of lading charge. Ex. A Fleischman Dep. at 34:3-35:2; Ex I Frey Dep. at 25:12-26:4.

47. CSX submitted invoices to B&J Group for the manual bill of lading charges, which total \$1,350 and remain unpaid. *See* Ex. G Declaration of LaGuardia at ¶13; *see* True and correct copies of CSX's manual bill of lading invoices attached as Exhibit R.

UNPAID CHARGES OWED TO CSX

48. In between 2014 and 2018, B&J Group accrued demurrage and manual bill of lading charges in the amount of \$89,575 (\$88,225 for demurrage charges and \$1,350 for manual bill of lading charges), which were invoiced to B&J Group pursuant to the terms of the Tariffs. *See* Ex. R Manual Bill of Lading Invoices; *see* Ex. O Demurrage Invoices; *see* Ex. G Declaration of LaGuardia at ¶¶10-13.

49. Pursuant to the Tariffs B&J Group has also accrued \$31,586.53 as of April 17, 2019 in late fees and finance charges. *see* Ex. J July 2014 CSXT 8100 at §§ 6.1.6-6.1.7; *see* Ex K January 2015-January 2018 CSXT 8100 at §§ 6.1.6-6.1.7.

50. Late fees are assed at a rate of 10% of the unpaid balance on each invoice and amount to \$8,957.50. *See* Ex. J July 2014 CSXT 8100 at § 6.1.7; *see* Ex. K 2015-January 2018 CSXT 8100 at § 6.1.7.

51. Finance charges are assessed at a rate of 12% per annum or .0329% per day and amount to \$22,629.03 as of April 17, 2019. *See* Ex. J July 2014 CSXT 8100 at § 6.1.6; *see* Ex. K January 2015-January 2018 CSXT 8100 at § 6.1.6.

52. The Finance charges in this matter continue to accrue at a rate of \$29.47 per day. *See* Ex. J July 2014 CSXT 8100 at § 6.1.6; *see* Ex. K January 2015-January 2018 CSXT 8100 at § 6.1.6.

53. Pursuant to the Tariffs B&J Group is also responsible for CSX's costs and attorney's fees associated with the collection of these past due amounts. *See* Ex. J July 2014 CSXT 8100 at § 6.1.9; *see* Ex. K January 2015-January 2018 CSXT 8100 at § 6.1.9.

54. B&J Group concedes that it has not paid CSX any of the charges being sought in this case. *See* Ex. A Fleischman Dep. at 18:19-22; *see* Ex. G Declaration of LaGuardia at ¶21.

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Date: April 19, 2019

EXHIBIT B

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CSX Transportation, Inc.

Plaintiff,

v.

B&J Group, Inc.

Defendant.

CASE NO: 2:17-CV-05296-CMR

**CSX TRANSPORTATION, INC.’S MEMORANDUM OF LAW IN OPPOSITION
TO B&J GROUP, INC.’S’ MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

This matter involves B&J Group, Inc.’s accrual of approximately \$89,000 in demurrage generated from rail cars sitting on railroad property for prolonged periods of time in violation of the governing terms necessary for the efficient movement of railcars.¹ In its Motion, B&J Group goes to great lengths to divert the Court’s attention from a simple fact: B&J Group is responsible for demurrage it accrued on rail cars it received pursuant to governing demurrage regulations that provide that the receiver of rail cars is liable for any resulting demurrage. This is based upon well-established law.

B&J Group’s claim that CSX cannot charge demurrage for rail cars located on Conrail track is simply not supported by the law or the facts. The U.S. Surface Transportation Board (“STB”) has already determined that CSX, not Conrail, has the exclusive and independent

¹ “Storing empty private cars imposes costs on the railroad, including the loss of system fluidity and the opportunity cost associated with using track for long-term car storage that instead could be used to facilitate the efficient movement of freight.” *N. Am. Freight Car Ass’n v. Surface Transp. Bd.*, 529 F.3d 1166, 1176 (D.C. Cir. 2008) (internal citations omitted)

authority to *establish* all rates, charges, and service terms, and to *collect* charges related to freight transported for CSX's account within Conrail territory. It made this determination when it approved CSX and Norfolk Southern's acquisition of Conrail in 1998. The STB has exclusive authority over the acquisition of a railroad and broad discretion to set the terms of such an acquisition. B&J Group fails to even identify or consider the regulatory power of the STB in this area, or in any way address the STB's key determination or governing federal law.

B&J Group also argues that the rail cars at issue were not placed on track that CSX's governing tariff applied to. This is simply not accurate and ignores the STB's determination. Demurrage for privately owned railcars accrues when the rail car is located on "railroad property". Here, the rail cars accrued demurrage while in one of two railroad serving yards. Both of these yards are railroad property because Conrail either owns or leases the tracks in those yards.

The fact that Conrail owns or leases the track and not CSX is irrelevant. The right to collect demurrage and the party responsible for paying demurrage is expressly set forth in the STB's demurrage regulations, which were promulgated in 2014. Nothing within those regulations requires a railroad to be the owner of the track where the demurrage accrues. According to the STB, so long as the private cars are held on "railroad property", demurrage accrues and is charged to the receiving entity, which is B&J Group in the present case. But even if the railcars were required to be stored on "CSX track", CSX's tariff defines CSX as itself, its affiliates and its subsidiaries, which – as admitted by B&J Group – includes Conrail. So B&J Group's arguments fail at every level.

Based upon the foregoing and as set forth more fully below, the Court must deny B&J Group's motion and enter summary judgment on behalf of CSX.

II. STATEMENT OF FACTS²

CSX is an interstate rail carrier that has published tariff CSXT 8100, which incorporated tariff 4049, pertaining, in part, to the accrual and assessment of demurrage charges (the “Tariffs”). B&J Group operates a warehouse in Morrisville, Pennsylvania, which is serviced by CSX and Norfolk Southern and through their jointly owned switching carrier and agent, Conrail. *See* SOF ¶¶1-2 and ¶¶5-6; *see* Exhibit S Declaration of Jonathan Broder at ¶¶5,8. B&J Group’s customers send freight to B&J Group via rail by loading rail cars and then transmitting bills of lading that instruct rail carriers – including CSX – to deliver the rail cars to B&J Group. *See* Ex. E to CSX’s SOF the Dec. of Clark at ¶ 7; *see* SOF at ¶21.

Once the shipper, at the rail car’s origin, tenders the rail car to CSX for delivery to B&J Group, CSX delivers the cars to a rail-serving yard in Morrisville, Pennsylvania (the “Morrisville Yard”). SOF at ¶6. Upon arrival at the Morrisville Yard, CSX notifies B&J Group that the rail car is available for placement at B&J Group’s facility and is under constructive placement status. *Id* at ¶7. After notice is issued, the rail car is considered constructively placed at this time (identified as the “NOTIFIED” date in the underlying invoices). *Id* at ¶ 14.

CSX will not place the rail cars directly at B&J Group’s facility upon arrival at the Morrisville Yard because B&J Group is considered a “closed gate” facility meaning that rail cars destined to B&J Group are held in the serving yard until B&J Group orders the cars to be placed at its facility (identified as the “ORDER” date in the underlying invoices). *Id* at ¶ 16. After the rail cars are delivered to the Morrisville Yard, CSX and Norfolk Southern’s private switch carrier,

² For sake of brevity, CSX incorporates by reference, as if fully set forth in this memorandum, its Statement of Facts (“SOF”), which were filed along with CSX’s Motion for Summary Judgment. ECF No. 41.2. The facts contained within this brief are relevant to the issue raised by B&J Group in its Motion.

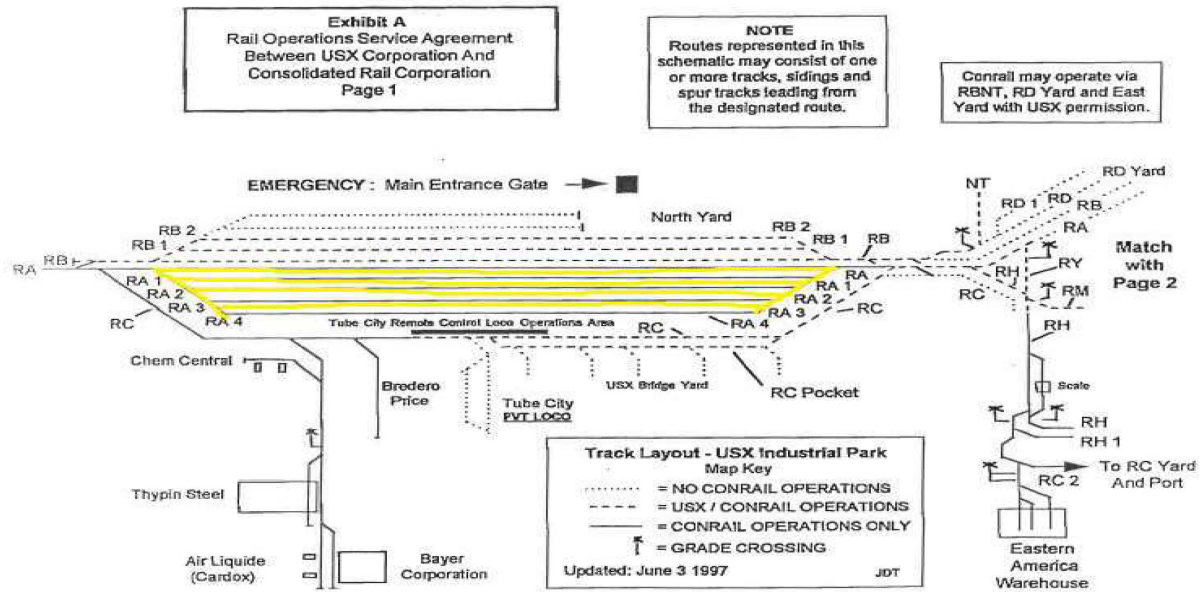
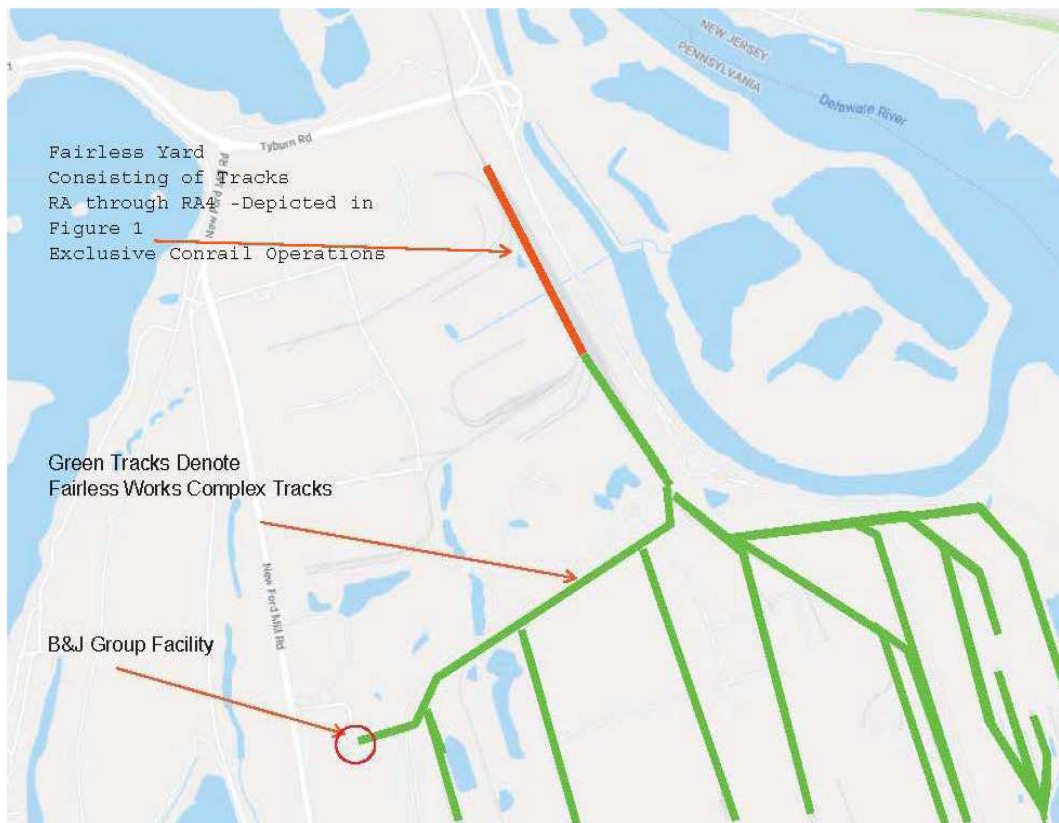
Conrail, can move the cars that are under constructive placement to a second nearby serving yard known as the Fairless Yard (“Fairless”; collectively with Morrisville the “Yards”) to alleviate congestion within the Morrisville Yard. *Id* at ¶ 11; *See* Ex. S Broder Dec., at ¶¶9, 15.³

In 1998 the STB authorized and oversaw CSX and Norfolk Southern Railway Company’s acquisition of Conrail. *See* *Id* at ¶13. The STB required that CSX and Norfolk Southern share certain segments of Conrail’s territory and infrastructure, which includes the Yards where the rail cars in this case were being held while waiting for B&J Group to order them into its facility for unloading. *See* *Id* at ¶¶6, 11. Considering the acquisition and related STB decisions, Conrail ceased maintaining a public demurrage tariff in 1999, since rail cars held in the Yards were then subject to the governing tariff of CSX or Norfolk Southern depending upon the rail carrier identified in each respective bill of lading. *See* *Id* at ¶¶12, 14. The Fairless Yard consists of five tracks, which are designated as RA, RA 1 through RA 4. Conrail leases these tracks from USX Corporation and they are under the exclusive control of Conrail. *See* *Id* at ¶10; *see* The Rail Operating Service Agreement between Conrail and USX Corporation (“OSA”) at Exhibit A, a true and correct copy of which is attached as Exhibit T.

Figures 1⁴ and 2 are provided below to illustrate the location of the Fairless Yard:

³ The Fairless Yard consists of five tracks, which are designated as RA, RA 1, RA 2, RA 3 and RA 4. These tracks are leased to Conrail solely for railroad operations qualifying them as railroad property. Contrary to B&J Group’s suggestion, the Fairless Yard *does not* include what B&J Group calls the Fairless Works Complex.

⁴ Figure 1 is copied directly from the OSA, and is Exhibit “A” to that agreement. Tracks RA through RA 4 (highlighted in yellow) are for “CONRAIL OPERATIONS ONLY” and are used by the railroads to stage railcars for switching or alleviate congestion in the Morrisville Yard.

Figure 1:**Figure 2:**

Once B&J Group orders the cars to be placed at its facility, Conrail will provide switching services (i.e. moving/switching the rail cars between the Yards and B&J Group's facility). *See* Ex. S Broder Dec., at ¶17; *see* SOF at ¶ 18. Conrail can provide switching services on behalf of CSX for B&J Group from either of the Yards. *See* Ex. S Broder Dec., at ¶9; *see* SOF at 9. After CSX or Conrail receive a placement order from B&J Group, the cars are removed from constructive placement status and delivered to B&J Group's facility. *See* SOF at ¶ 18.

III. DEMURRAGE FOR PRIVATE RAIL CARS SITTING ON RAILROAD PROPERTY SUCH AS THE CHARGES AT ISSUE.

The demurrage charges at issue accrued on private rail cars and are referred to as private car storage fees in CSX's tariff. Private car storage fees are a type of demurrage that accrues when an entity such as B&J Group stores a private rail car on railroad property. Both the STB and federal courts have treated the charges as one and the same. *See* Surface Transportation Board, Demurrage Liability, Docket No. EP 707, 79 FR 21407-01 ("Under the rule as written, when privately owned cars are held beyond the free time on railroad property, demurrage will apply . . ."); *N. Am. Freight Car Ass'n v. Surface Transp. Bd.*, 529 F.3d 1166, 1169 (D.C. Cir. 2008) ("Demurrage" and "[private car] storage" are often used interchangeably with respect to such charges.").

When a receiver such as B&J Group stores its rail cars on railroad property it comes at a cost to the railroad. *See N. Am. Freight Car Ass'n v. Surface Transp. Bd.*, 529 F.3d 1166, 1176 (D.C. Cir. 2008) ("Storing empty private cars imposes costs on the railroad, including the loss of system fluidity and the opportunity cost associated with using track for long-term car storage that instead could be used to facilitate the efficient movement of freight.") (internal citations omitted);

See also Demurrage Liability, 79 FR 21407-01, at *21409 (Where the STB clarified that demurrage charges apply to private rail cars on railroad property because it “compensate[s] the railroad for use of its assets (i.e., the space on its track or at its yards), and they encourage more efficient use of freight cars on its system.”) (internal citations omitted). As explained by other courts within the Third Circuit, when an entity “utilizes a railcar, [it] is taking up a railroad asset — the use of that railcar.” *Norfolk S. Ry. Co. v. Port Elizabeth Terminal & Warehouse Corp.*, No. CV 17-1819 (SRC), 2019 WL 1399555, at *1 (D.N.J. Mar. 27, 2019) (internal citations omitted). The railroad “has a right to set a reasonable time for a shipper to finish using that asset and return it to the railroad. If a shipper keeps the asset for too long, then it should compensate the railroad for the extended use of its railcar — in other words, for demurrage.” *Id.*

For these reasons and as required by 49 U.S.C. §10746, railroads are required to charge and entitled to receive demurrage.

IV. ARGUMENT

Contrary to B&J Group’s claims, CSX is not claiming that it has the ability to assess demurrage merely as a shareholder or corporate parent of Conrail. It is assessing demurrage directly on its own behalf as mandated by federal law. The ability to charge demurrage and the liability to pay for demurrage charges is governed by regulations the STB promulgated in 2014. Those regulations provide that the delivering carrier, here CSX, must assess demurrage charges pursuant to its tariff so long as it provided B&J Group with notice of the tariff before B&J Group received the rail cars.

The fact that the rail cars at issue accrued demurrage while physically on Conrail tracks as compared to CSX’s tracks is irrelevant. The STB has already determined that Conrail only acts as

an agent for the benefit of CSX and that CSX has exclusive rights to establish service terms and conditions for operations within Conrail territory. Furthermore, even if the STB had not rendered the decisions cited above, the plain language of CSX's tariff itself permits CSX to recover demurrage accruing on rail cars located on "a railroad's tracks", which is not limited to "CSX's tracks". Furthermore, the tariff defines "CSX" to include its rail subsidiaries and affiliates, which indisputably includes Conrail such that CSX's track encompasses Conrail's track. As a result, all of B&J Group's arguments fail as a matter of law.

A. The STB previously determined that CSX is the only entity which can assess demurrage on cars delivered for its account in a Shared Assets Area (Conrail).

The STB is the government agency charged with oversight of rail transportation, and it has exclusive jurisdiction over operating rules and car service rules, which includes demurrage. *See* 49 U.S.C. §10501. Title 49 also provides that the remedies provided under Part A of Title 49 "are exclusive and preempt the remedies provided under Federal or State law." Furthermore, the STB has exclusive authority over the acquisitions of rail carriers. *See* 49 U.S.C. § 11321 ("The authority of the Board under this subchapter is exclusive."); 49 U.S.C. § 11323 (providing that acquisition of control over a rail carrier may only be carried out with approval from the STB); *Grainbelt Corp. v. STB*, 109 F.3d 794, 798–99 (D.C.Cir.1997) (citing predecessor provision 49 U.S.C. § 11344(c), applicable to STB's predecessor, the Interstate Commerce Commission, and recognizing the broad discretion of the STB).

Pursuant to its exclusive and broad authority, the STB approved CSX and Norfolk Southern's acquisition of Conrail in 1998 and issued a final written decision setting forth the terms and conditions of the acquisition. *See CSX Corp. & CSX Transportation, Inc., Norfolk S. Corp. & Norfolk S. Ry. Co. -Control & Operating Leases/agreements-Conrail Inc. & Consol. Rail Corp.,*

3 S.T.B. 196 (1998) . As discussed below, the STB determined that CSX could establish service terms, rates and charges for rail operations in Conrail territory and *collect* those charges, and the Third Circuit upheld the STB’s decision, resolving this issue as a matter of law.

Completely absent from B&J Group’s Motion is any mention of the STB’s determination with respect to CSX’s acquisition of Conrail. B&J Group also completely fails to mention the governing demurrage regulations, which are discussed below. Instead, B&J Group argues Pennsylvania corporate law, effectively asking the Court to overrule the STB’s decision on an issue on which it has exclusive authority, and which was upheld by the Third Circuit. It does so without mentioning or advising the Court of this adverse authority.

With respect to the acquisition of Conrail, the STB determined that CSX and Norfolk Southern would use Conrail’s territory and assets referred to as three “shared assets areas”, which includes the Philadelphia/South Jersey SAA where B&J Group is located. *Id.* at * 14.⁵ CSX was granted authority to use and operate within the SAA as though it were Conrail. *Id.* at *16. (“[T]he SAAs will be used, enjoyed, and operated as fully by CSX and [Norfolk Southern] as if each of them were Conrail.”).

The STB developed the SAAs to be served by Conrail for the benefit of CSX and Norfolk Southern. *See Conrail Inc.*, 3 S.T.B. 196 (1998). CSX and Norfolk Southern were also given the rights to track that Conrail was operating over and to use, operate and enjoy the SAAs to the same extent as Conrail. *Id.* at *120-121. The STB further prescribed that – on CSX transported rail cars – CSX’s service terms and conditions govern the services provided within the SAA. Those terms, which include the assessment of demurrage, are contained in CSX’s tariffs. In fact, CSX is the

⁵ The three shared assets areas (“SAAs”) are: the North Jersey SAA; the South Jersey/Philadelphia SAA, and the Detroit SAA. *Id.*

only entity with the “*exclusive* and independent authority to *establish all rates, charges, service terms* and divisions, *and to collect* all freight revenues, related to freight transported for its account within a SAA.” *Id* at *14 (emphasis added).

Conversely, the STB announced that when Conrail performs transportation services within the SAA it does so as an agent of Norfolk Southern or CSX. *Id.* at *17. (“[Conrail] will not hold itself out to the public as performing transportation services directly and for its own account; [Conrail] will not enter into any contract (other than with [CSX] or [Norfolk Southern]) for the performance of transportation services; and *all transportation services performed by [Conrail] will be performed as agent or subcontractor of [CSX] or [Norfolk Southern].*”) (emphasis added).⁶ As a result, the Tariffs govern operations on Conrail tracks and in Conrail territory.

While B&J Group goes to great lengths to suggest CSX’s tariff does not apply this is simply not supported by the applicable law. The STB’s determination that CSX’s tariffs provide the applicable rail service terms and conditions – including those for demurrage – in an SAA and that Conrail acts as CSX’s limited agent when delivering rail cars in the SAAs conclusively establishes this issue as a matter of law. *Com. of Pennsylvania v. Surface Transp. Bd.*, 290 F.3d 522 (3d Cir. 2002) (denying petition for review of Decision No. 89).

The [STB]’s imposition of conditions to mergers has been characterized as the kind of judgmental or predictive conclusion with respect to which judicial deference to agency expertise is especially appropriate. Given the [STB]’s extraordinarily broad discretion to impose ... conditions pursuant to a merger the court have appropriately given the [STB]’s section of such conditions great deference.

⁶ See also *In re Paulsboro Derailment Cases*, Lead Case No. 13-784, 2015 WL 4914397, *6 (D.N.J. Aug. 18, 2015) (“Conrail’s primary purpose, as a switching and terminal railroad company, is to ‘connect larger carriers, and/or to own and operate terminal facilities,’ and not to ‘engage in transportation of freight as a line-haul carriers on behalf of shippers.’”); *Consol. Rail Corp. v. Grand Trunk W. R. Co.*, 607 F. App’x 484, 492 (6th Cir. 2015) (“The STB further determined that Conrail movements within the Detroit Share Asset Area are for the purposes of NS and/or CSX, thus rendering Conrail an agent of NS and CSX.”).

Id. at 530-31 (quoting *S. Pac. Transp. Co. v. ICC*, 736 F.2d 708, 720-21 (D.C. Cir. 1984) (internal quotations omitted). Furthermore, “[w]here the [STB] is interpreting and applying conditions it has promulgated according to its statutory authority, its action is accorded the highest deference.” *Id.* at 530. Decision No. 89 approved the conditions of the acquisition of Conrail, has been subjected to the STB’s interpretation on multiple occasions,⁷ and has been affirmed by the Third Circuit Court of Appeals. *See Com. of Pennsylvania*, 290 F.3d at 536. Thus, Conrail’s role as CSX’s limited agent and the governing effect of the Tariffs on the demurrage at issue in this case is established as a matter of law.⁸

⁷ *See Norfolk S. Ry. Co. & CSX Transportation, Inc.-Discontinuance Exemptions-in Hudson Cty., New Jersey*, No. AB 55, 2001 WL 744688, at *2 (S.T.B. July 3, 2001) (“Although NS has not physically conducted train operations in local service over the line pursuant to its operating rights, it publishes rates and maintains stations for the customers on the line pursuant to its rights under the Shared Assets Operating Agreement for North Jersey. Traffic to and from customers on the line is handled in either NS’s or CSX name. Physical train operations on the line have been conducted by Conrail as agent of NS or CSX pursuant to the Shared Assets Operating Agreement for North Jersey.”); *Conrail Abandonment of the Weehawken Branch-in Hudson Cty., NJ* *Conrail Abandonment of the River Line-in Hudson Cty., NJ*, No. AB-167 (SUB 1067N), 2001 WL 244841, at *3 (S.T.B. Mar. 12, 2001) (“Under the SAA Agreements, NS and CSXT have exclusive and independent authority to establish rates, charges, service terms, routes, and divisions and to collect freight revenues on any traffic moving within the SAAs for their account...and, as contemplated by the SAA Agreements, [Conrail] provides rail service to most customers within the SAAs as NS’ and CSXT’s agent.”); *CSX Corp. & CSX Transportation, Inc., Norfolk S. Corp. & Norfolk S. Ry. Co.--Control & Operating Leases/agreements--Conrail Inc. & Consol. Rail Corp. [General Oversight]*, No. 33388 (SUB 91), 2004 WL 2619768, at *11, 17 (S.T.B. Oct. 20, 2004) (noting Oak Island is within the North Jersey SAA and affirming that “the role of Conrail as a neutral switcher acting as an impartial agent of its two owners was a critical component of the Conrail Transaction that CSX and NS proposed and that the Board approved.”).

⁸ Applying CSX’s Tariffs to shipments in Conrail territory is consistent with precedent within the Third Circuit. In the seminal demurrage case prior to the STB’s regulations, *CSX Transportation, Inc. v. Novolog Bucks County*, the Third Circuit and this Court permitted CSX to recover demurrage for rail cars in Conrail territory. *See CSX Transp. Co. v. Novolog Bucks County*, 502 F.3d 247, 254-263 (3d Cir. 2007) (*Novolog II*), *cert. denied*, 128 S.Ct. 1240 (2008); *CSX Transp. Co. v. Novolog Bucks County*, Case No. 04-4018, 2006 WL 14151280, *1 (E.D. Pa. May 24, 2006) (*Novolog I*) (“Although the Fairless facility is operated by Novolog, rail services within in and around the port frequently are provided by Conrail Shared Assets, an entity related to CSX.”);

B. The STB’s regulations expressly provide who may charge demurrage and who is liable for demurrage, which, in this case is CSX and B&J Group respectively.

In 2014 the STB promulgated regulations pertaining to the assessment of demurrage charges in order to resolve a split between the Third Circuit and the Eleventh Circuit.⁹ *See* 49 CFR §§ 1333.1 – 1333.3. The STB’s demurrage regulations establish that CSX, as the serving carrier, may charge demurrage, and B&J Group, as the receiver of the rail cars, is liable for demurrage. The regulations provide that the “[d]emurrage *shall* be assessed by the serving carrier . . . i.e., the rail carrier . . . delivering [rail cars] to a receiver at an end-point or intermediate destination”. *See* 49 C.F.R. §1333.2 (emphasis added). Here, CSX is the serving carrier as it delivers rail cars to the Yards, and any operations performed by Conrail can only be performed as an agent for CSX pursuant to the STB’s prior decision.

As the serving carrier, CSX is mandated by law to assess demurrage. The regulation goes on to provide that, in the absence of a contract, the serving carrier’s tariff will govern the assessment of demurrage. *Id.* B&J Group argues that CSX has not entered into a separate contract with it regarding demurrage apparently failing to recognize that, as a result, CSX’s Tariffs apply as a matter of law.

B&J Group cannot feign surprise at the application of the Tariffs or seek to avoid the charges because CSX provided it with notice of its tariff as required by the STB’s regulations.

Norfolk S. Ry. Co. v. New York Terminals, LLC, No. CV 2:14-07664, 2017 WL 4005158, (D.N.J. Sept. 12, 2017) (involving the accrual of demurrage in Port Elizabeth, New Jersey, which is located within one of the Shared Asset Areas).

⁹ Compare *CSX Transp. Co. v. Novolog*, 502 F.3d 247 (3rd Cir. 2007) (finding that third-party intermediary is liable for demurrage charges as long as it is named as the consignee on the bill of lading and accepts the freight) with *Norfolk S. Ry. v. Groves*, 586 F.3d 1273 (11th Cir. 2009) (finding that a third-party intermediary is not liable for demurrage unless it expressly agreed to be named as a consignee or is given advance notice of its designation and provided with an opportunity to object).

Pursuant 49 C.F.R. § 1333.3, a rail carrier must provide the entity receiving the rail cars with notice of its tariff in order to assess demurrage against that entity. The reasoning behind the notice requirement is equitable and sounds in traditional contract principles of offer and acceptance. As stated in the STB's opinion on the issue, "a shipper or receiver of rail cars to whom the rail carrier has given *actual* notice of its own demurrage tariff will be deemed to have accepted the rail carrier's demurrage terms whenever it accepts the cars." Demurrage Liability, 79 FR 21407-01, at *21409 (emphasis in the original). Here, there is no dispute that B&J Group had actual notice of CSX's tariff. *See* ECF 41.14; ECF. 41.15. And by accepting rail cars, B&J Group accepted the terms of the tariff. For these reasons, CSX's Tariffs apply and it may charge demurrage for cars in Conrail territory as a matter of law.

C. CSX is not required to own the track where the demurrage accrued, as the demurrage need only accrue on railroad property and, regardless, CSX's tariff defines CSX's track to include track belonging to Conrail.

Even if the Court were to ignore the express language of the Tariffs, the STB's ruling stating that CSX's service terms govern operations in Conrail territory, and that Conrail's tracks and operations are only for the exclusive benefit of CSX, CSX's tariff provides that CSX can charge demurrage for rail cars on another railroad's tracks. Further still, CSX is defined by the tariff to include its affiliates and subsidiaries, which obviously includes Conrail. So by the very terms of the tariff, CSX can charge for demurrage for rail cars sitting on Conrail track.

i. Demurrage for private cars need only accrue on "a" railroad's track, not just CSX's track.

B&J Group correctly cites to CSX's tariff quoting that "Private Car Storage fees are applied to Private Cars waiting on *a railroad's tracks*..." *See* Def. Br. At p. 6 (emphasis added); *See* also CSX Tariff at §2. However, B&J Group improperly directs the Court to interpret this provision to mean that "a railroad's track" only refers to CSX's track such that CSX can only

assess demurrage for rail cars on tracks CSX directly owns or leases. Nothing within the STB's demurrage regulations require the serving carrier itself to own or lease the track where the charges accrue. Consistent with CSX's tariff, all that is required is that the rail car be positioned on "railroad property." Demurrage Liability, 79 FR 21407-01, at *21409 ("[W]e clarify here that [rail cars] encompasses both railroad-owned cars and privately owned cars when such privately owned cars are held on railroad property . . . because [demurrage] charges 'compensate the railroad for use of its assets (i.e., the space on its track or at its yards), and they encourage more efficient use of freight cars on its system.'" (internal citations omitted)).

Conrail is a switching and terminal railroad, such that property it owns, leases or controls is "railroad property".¹⁰ See *Conrail Inc.*, 3 S.T.B. 196, at *121. And as set forth by the STB, Conrail's assets are considered CSX's assets. Thus, CSX may properly assess demurrage charges for rail cars located on Conrail leased or controlled track. This is consistent with the STB's decision that CSX has "exclusive . . . authority to establish all rates, charges, [and] service terms . . . and to collect . . ." all such rates and charges in Conrail territory. *Id.* at *14 (emphasis added).

ii. *CSX's Tariffs define CSX to include Conrail meaning that CSX track includes Conrail track.*

Moreover, even if the Tariffs provide that demurrage can only be applied to rail cars on CSX's track, CSX's Tariff defines CSX as "CSX Transportation, Inc., and its rail subsidiaries and affiliates". See ECF 41.16 at Article I. The plain reading of this language is that the tariff governs

¹⁰ There can be no dispute that the leased track is considered railroad property as a lease is tantamount to the sale of land. See *Commonwealth v. Monumental Properties, Inc.*, 459 Pa. 450, 470, 329 A.2d 812, 822 (1974) (stating that "[w]hen land is leased to a tenant, the law of property regards the lease as equivalent to a sale of the premises for the term.") (internal citations omitted); *Hunziker v. Scheidemantle*, 543 F.2d 489, 493 (3d Cir. 1976) ("A lease . . . is recognized under Pennsylvania law as tantamount to the sale of the premises for a term.") (citing *Monumental Properties, Inc.*, 459 Pa. 450, 329 A.2d 812 (1974)).

tracks not only owned, leased or controlled directly by CSX but also tracks that are owned, leased or controlled by its affiliates and subsidiaries. It is indisputable that Conrail is an affiliate of CSX.¹¹ The STB's decision regarding Conrail's acquisition, and even B&J Group's argument, provide that Conrail is an affiliate of CSX.

Here, B&J Group's argument would have the Court interpret the plain language of the Tariffs to define "a railroad's track" to mean only CSX's track and not any other railroad. However, CSX's Tariffs must be interpreted as a whole. And given the Tariff's definition of CSX, it must be read to include Conrail and demurrage to include the storage of private rail cars on Conrail track. Accordingly, CSX's tariffs provide that CSX can assess demurrage for private rail cars held on Conrail track waiting for B&J Group to order them into its facility.

D. The Shared Assets Area Operating Agreement Expressly Permits CSX to Charge Demurrage for Rail Cars in a SAA delivered for CSX's Account.

B&J Group also attempts to establish that CSX's operating agreement with Conrail prevents CSX from assessing demurrage. The Shared Assets Operating Agreement for Philadelphia/South Jersey (the "SAA Agreement") is a private contract between CSX, Norfolk Southern and Conrail and speaks to the respective rights and obligations between those entities. B&J Group is not a party to that agreement and has no standing to enforce its terms. Furthermore, liability for demurrage is governed by the STB's demurrage regulations and CSX's governing tariff as discussed above. B&J Group attempts to divert the Court's attention from the governing law by focusing on a private agreement between affiliated railroads to which they are not a party. This argument is nothing more than a red herring.

¹¹ An affiliate is "a corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation." AFFILIATE, Black's Law Dictionary (10th ed. 2014).

The SAA Agreement is a fifty-page document from which B&J selectively extracts *two* paragraphs in order to construct its argument. In doing so it contorts the agreement's terms to support its argument. However, the Court must read the SAA Agreement as a whole to give effect to all of its provisions and in interpreting the terms must look to what the parties clearly expressed. *Com. ex rel. Kane v. UPMC*, 634 Pa. 97, 135, 129 A.3d 441, 463 (2015). A review of the entire document establishes that CSX is responsible for establishing service terms and conditions for rail cars it is transporting, including the assessment of demurrage, which again, is consistent with the STB's decisions regarding CSX's acquisition of Conrail.

- i. CSX is permitted to charge demurrage for loaded railcars that are being stored on Conrail track on behalf of B&J Group.*

B&J Group claims that the SAA Agreement “makes it clear that CSX is not permitted to charge demurrage for traincars which are stored in the Shared Asset Area”. Def. Brief at p. 6. In support, B&J Group cites to a portion of an Exhibit of the SAA Agreement that provides that “Neither parent company may store or pre-position cars on Shared Assets Areas tracks *Empty cars* . . . must be loaded without beginning to accrue charges.” SAA Agreement, Sealed Appx 48 (Emphasis added).¹² CSX maintains that the governing regulations determine who can assess demurrage.

Regardless, this section has absolutely nothing to do with the delivery of rail cars to B&J Group. The provision speaks only to *empty* cars CSX or Norfolk Southern elect to store on Conrail

¹² The full provision provides “Neither Parent Company may store or pre-position cars on Shared Assets Area's tracks, including yard and industrial tracks to which they have access. *Empty* cars routed to the Shared Assets Areas must have a customer designation assigned and must be *loaded* without beginning to accrue demurrage.” SAA Agreement, Sealed Appx 48 (*Emphasis added*).

track on their own behalf.¹³ The present case involves *loaded* rail cars that are being stored on Conrail track on behalf of B&J Group while waiting for B&J Group to order them in and unload them. *See* ECF. 41.17; *See* ECF 41.10; *see* ECF 41.9 at ¶¶ ; *see* ECF 41.8; *see* 41.7 at ¶¶7-8. B&J Group’s attempt to blindly extract language from irrelevant portions of this historic transactional contract it was not a party to does not change the fact that CSX’s Tariffs and the governing regulations determine who can assess demurrage and who is responsible for paying those charges.

B&J Group simply ignores the provisions of the SAA Agreement that are consistent with the STB’s 1998 decision, and which provide that Conrail operates and maintains the SAAs for the exclusive benefit of CSX and Norfolk Southern or the provision that provides that CSX shall “*have exclusive and independent authority to establish all rates, charges, service terms, routes and divisions, and to collect all freight revenues, relating to freight traffic transported for its account to, from and within the Shared Assets Area.*” *See* SAA Operating Agreement at page 1, Section 3(d)(i), Section 3(f), Section(g).

As set forth in CSX’s Motion, B&J Group’s shipper/customers direct CSX to deliver *loaded* rail cars to B&J Group’s facility. *Id.* CSX then transports those cars from an origin point or interchange point to Morrisville. *See* ECF 41.10; *see* ECF 41.8; *see* SOF AT ¶6. While those cars are in transit B&J Group is notified of the ETA and informed that upon constructive placement that the cars must be ordered for delivery or that demurrage will accrue. *See* ECF 41.10; *see* ECF 41.2 at ¶ 21. When B&J Group fails to timely order a rail car for delivery after constructive placement, it is B&J Group – not CSX – that is storing the cars on SAA track, which is why demurrage is assessed. *See* SOF AT ¶¶ 16, 34; *see* ECF 41.12 at § 2; ECF 41.13 at § 2.

¹³ Both CSX and Norfolk Southern own railcars. However, it is undisputed that the charges at issue do not involve CSX owned railcars, they are privately owned further eliminating any application of this provision.

Importantly, and further undermining B&J Group’s argument, the SAA expressly provides CSX is solely responsible for establishing service terms pertaining to demurrage:

“[CSX] shall at all times be solely responsible . . . for providing service to its shippers within the Shared Assets Area pursuant to its transportation contracts or other prices with its shippers, including interline accounting, and all car hire and demurrage or detention charges associated with Railcars in its account within the Shared Assets Area.”

See SAA Agreement, Section 3(i). Moreover, the SAA Agreement defines “Shared Assets” as “all tracks, lands, easements, rights of way, structures, facilities, appurtenances and rights related thereto, which [Conrail] *owns or leases*” *See* SAA Agreement, Section 1(yy). It further defines “Shared Assets Area” as the “geographical region comprising the Shared Assets” *Id.* at Section 1(zz). The SAA Agreement also provides CSX with “full operating rights . . . over to any and all tracks in the Shared Assets” SAA Agreement Section 3(a). Read collectively, CSX has full operating rights over all Conrail track and the right to establish charges associated with those tracks including the assessment of demurrage.

The portions of the SAA Agreement upon which B&J Group relies is irrelevant to the present controversy based upon the governing regulations and the terms of CSX’s tariffs. Its references to these provisions is clearly meant to distract from simple issues. Moreover, these arguments are inconsistent and nonsensical because its very next argument is that CSX has not entered into an “agreement” with B&J Group regarding demurrage as allegedly required by the SAA Agreement. *See* Def. Brief p. 9. In sum, B&J Group is asking this Court to hold that the SAA Agreement does not permit CSX to charge demurrage in a Shared Assets Area and, at the same time, hold that CSX failed to make demurrage arrangements with B&J Group as required by the SAA. B&J Group’s argument is in conflict with itself because it has no merit.

If B&J Group’s argument that CSX could not charge demurrage pursuant to the SAA is correct, it would negate the requirement for CSX to enter into demurrage “arrangements” with its

customers rendering the provision pertaining to demurrage arrangements and to establish service terms related to demurrage meaningless. It is well settled that Courts must not interpret contracts to render provisions meaningless, which is what would happen under B&J Group's tortured interpretation. As a result, B&J Group's interpretation fails as matter of law.

ii. CSX has independently established demurrage and car storage arrangements with B&J Group, which are provided by CSX's governing tariff.

In its second argument related to the SAA Agreement, B&J Group contends that CSX "has not entered into any independent agreement with B&J regarding demurrage" as allegedly required by the SAA Agreement, and, thus, CSX is precluded from assessing demurrage. This argument asks the Court to completely ignore the governing federal regulations the STB promulgated, which expressly state that, in the absence of a contract, the carrier's tariff governs the assessment of demurrage. 49 C.F.R. §1333.2. B&J Group fails to articulate any basis for suggesting that it is somehow exempt from the governing federal regulations under a private operating agreement between CSX and Conrail.

Further still, the SAA Agreement does not require CSX to enter into an "agreement" with its customers; it only requires that CSX make demurrage "arrangements" with customers regarding demurrage, which CSX did through promulgation of its tariff and providing notice of its tariff to B&J Group prior to the placement of the rail cars at issue.

Federal law requires rail carriers to compute demurrage charges and establish rules related to those charges. 49 U.S.C. § 1076. As a result, CSX is required to maintain a tariff, which shall govern the accrual of demurrage. CSX's demurrage tariff is CSX Tariff 8100, which incorporates Tariff 4049. The STB's demurrage regulations provide that, absent a separate contract with an individual customer regarding demurrage, the carrier's tariff governs the assessment of

demurrage. 49 C.F.R. § 1333.2. As a result, B&J Group's contention that CSX failed to enter into a separate agreement with it regarding demurrage does nothing more than establish that B&J Group is subject to the terms of CSX's tariff. As discussed above, B&J Group received notice of the tariff¹⁴ and cannot now be heard to complain of its terms after it accepted rail cars pursuant to those terms.

To the extent that the SAA Agreement somehow requires CSX to establish demurrage arrangements with B&J Group, it did so. The Tariffs provide that by accepting the delivery of a rail car, B&J Group accepts "all rules, requirements and applicable charges established" in the Tariff.¹⁵ So even absent the governing federal regulations, B&J Group's arguments fail as it accepted the terms of the Tariffs when it accepted delivery of rail cars.

V. CONCLUSION

B&J Group's Motion fails to even bring the central STB decision addressing Conrail to the Court's attention and completely ignores the governing regulations. B&J Group's argument that it has no contracts with CSX only serves to establish the application of CSX's tariffs. These arguments simply fail at every level.

¹⁴ See ECF 41.14; ECF. 41.15.

¹⁵ CSX's Tariff 8100 expressly provides:

By arranging for services with CSXT, a Customer, or any third party acting under the direction or on behalf of a Customer, authorizes and accepts all the rules, requirements and applicable charges contained within this publication. In addition, any action taken by a Customer, or any other Carrier, that:

- Initiates,
- Accepts delivery of, or
- Affects a movement or supplemental service in CSXT's network

...also constitutes acceptance by that Customer or Carrier of all rules, requirements and applicable charges established here.

See ECF 41.12 at Section 1.1; see ECF 41.12 at Section 1.1.

CSX is the only entity that can establish rules related to the assessment of demurrage and collect those charges for rail cars delivered for its account in Conrail territory and on Conrail tracks. The STB's demurrage regulations and its authorization of CSX and Norfolk Southern's acquisition of Conrail establish this right as a matter of law.

As for B&J Group's arguments regarding the SAA Agreement, B&J Group first asserts that the clear meaning of the contract states that CSX cannot store cars on Conrail track and therefore any car held on Conrail track cannot accrue demurrage. However, B&J Group's selective citation of this provision would render the second provision it cites requiring CSX to establish arrangement with B&J Group regarding car storage and demurrage moot. This simply makes no sense. Furthermore, this provision applies to the storage of *empty* rail cars by CSX, whereas here B&J Group is the entity storing *loaded* rail cars until it orders them into its facility effectively using CSX's tracks as additional warehouse space.

B&J Group's also asserts that CSX has not established demurrage arrangements with B&J Group and therefore under the SAA Agreement cannot assess demurrage. B&J Group's argument is in contravention of federal regulations that provide that absent a contract, a railroad's demurrage tariff governs the accrual of demurrage. Therefore, CSX has established an arrangement with B&J Group regarding demurrage as CSX maintains a demurrage tariff, provided B&J Group with notice of its tariff, and B&J Group accepted rail cars, and thus the terms of the tariff, after receiving that notice.

Accordingly, the Court must deny B&J Group's motion and instead enter summary judgment on behalf of CSX.

KEENAN COHEN & MERRICK. P.C.

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CSX Transportation, Inc.

Date: May 10, 2019

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CSX Transportation, Inc.

Plaintiff,

v.

B&J Group, Inc.

Defendants.

CASE NO: 2:17-CV-05296-CMR

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2019, CSX Transportation, Inc.'s, Memorandum of Law in Opposition to B&J Group, Inc.'s, Motion for Summary Judgment and supporting Exhibits were filed electronically with the Court using CM/ECF, which will transmit an electronic copy to all counsel of record.

By: s/Jeffrey D. Cohen
Jeffrey D. Cohen

EXHIBIT “S”

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CSX Transportation, Inc.

Plaintiff,

v.

B&J Group, Inc.

Defendant.

CASE NO: 2:17-CV-05296-CMR

DECLARATION

Pursuant to 28 U.S.C. §1746, the undersigned does hereby declare under the penalty of perjury that the below information is true and correct to the best of my knowledge, information and belief:

1. I am employed by Consolidated Rail Corporation (“Conrail”) and am authorized to make this declaration on its behalf.

2. I serve as the Vice President of Corporate Development and Chief Legal Officer at Conrail.

3. I have personal knowledge of the facts contained in this Declaration.

4. I am familiar with Conrail’s tracks and operations in Morrisville, Pennsylvania.

5. Conrail is a switching and terminal railroad which is affiliated with CSX Transportation, Inc. (“CSX”) and Norfolk Southern Railway Company (“Norfolk Southern”).

6. Conrail’s operations are conducted in areas known as the Shared Assets Areas (“SAA”).

7. When Conrail delivers rail cars to B&J Group, Inc. (“B&J Group”) it does so on behalf of, and as a service provider to, Norfolk Southern or CSX, respectively, based on the rail carrier identified in each respective bill of lading.

8. B&J Group is located at 1001 New Ford Mill Rd., Morrisville, PA 19067, which is located geographically within the Philadelphia/South Jersey SAA.

9. B&J Group is served from one of two rail serving yards known as the Morrisville Yard and Fairless Yard respectively (the “Rail Serving Yards”).

10. The Fairless Yard is comprised of tracks Conrail operates pursuant to operating agreement with USX Corporation and are under the exclusive control of Conrail as indicated in Exhibit 1 appended to this Declaration. Appended as Exhibit 1 to this declaration is a highlighted true correct and genuine copy of Exhibit A to the Rail Operating Service Agreement between USX Corporation and Conrail as well as a printout from google maps indicating the location of the tracks. These are railroad controlled tracks that are used to stage cars on behalf of CSX and Norfolk Southern customers, to alleviate congestion at the Morrisville Yard and to ensure efficient switching services.

11. The Rail Serving Yards are located in the Philadelphia/South Jersey SAA.

12. Rail cars held at the Rail Serving Yards are subject to the governing tariff of CSX or Norfolk Southern, depending upon the rail carrier identified in each respective bill of lading.

13. As approved by the Surface Transportation Board in Finance Docket No. 38304, Decision – Surface Transportation Board – Control – Conrail Inc., et al., 3 S.T.B. 196 (1998) (Decision No. 89), when a rail car is delivered for CSX’s account in a SAA, CSX has the exclusive and independent right to assess all rates and charges including demurrage charges

related to the rail cars transported on its behalf. Conrail does not assess or collect demurrage charges as those charges are handled by CSX.

14. Beginning as of June 1, 1999 Conrail ceased maintaining a public demurrage tariff.

15. A rail car whose ultimate destination is B&J Group's facility is held at the Rail Serving Yards until B&J Group provides an order to place the rail car into its facility.

16. Once Conrail receives an order to deliver a rail car to B&J Group, the date and time of the order is recorded and the information is immediately transmitted to either CSX or Norfolk Southern respectively.

17. After Conrail receives the order to deliver a rail car to B&J Group, Conrail will place the rail car at B&J Group's siding. This service is known as a "switching" or "spotting" service.

18. When Conrail performs switching or spotting services by moving rail cars from the Rail Serving Yard to B&J Group's facility or removing rail cars from that facility, the movement is recorded and the information is immediately transmitted to CSX or Norfolk Southern.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 6, 2019.

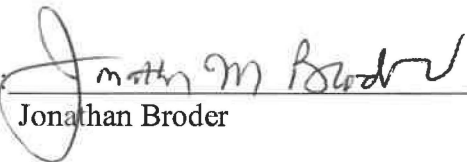
By: 
Jonathan Broder

EXHIBIT “1”

Exhibit A
 Rail Operations Service Agreement
 Between USX Corporation And
 Consolidated Rail Corporation
 Page 1

NOTE
 Routes represented in this
 schematic may consist of one
 or more tracks, sidings and
 spur tracks leading from
 the designated route.

Conrail may operate via
 RBNT, RD Yard and East
 Yard with USX permission.

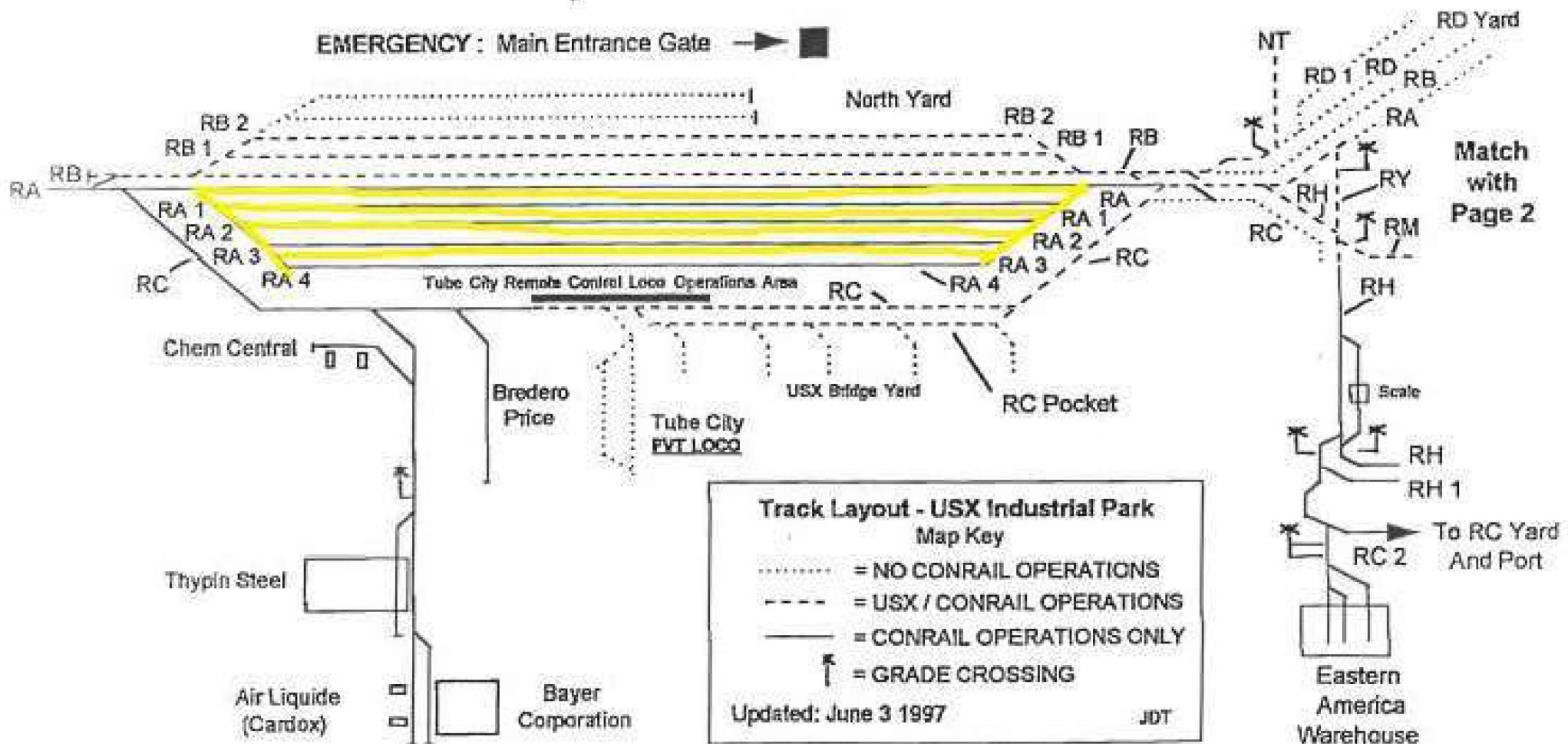




EXHIBIT “T”

#77127

RAIL OPERATING SERVICE AGREEMENT
BETWEEN
USX CORPORATION
AND
CONSOLIDATED RAIL CORPORATION

CSX_03204

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- A. Sketch of Railroad Track in Fairless Industrial Park
- B. Sample Lease Provision

#77127

RAIL OPERATING SERVICE AGREEMENT

THIS AGREEMENT made as of the 21st day of July, 1997, but effective June 1, 1997, by and between USX CORPORATION, a Delaware corporation with offices at 600 Grant Street, Pittsburgh, Pennsylvania 15219-2749 (hereinafter "USX") and CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation with offices at 2001 Market Street, Philadelphia, PA 19101 (hereinafter "Conrail").

WITNESSETH:

WHEREAS, USX owns certain real estate in Fairless Hills, Pennsylvania, which it is developing and intends to further develop as an industrial office park ("Fairless Industrial Park"); and

WHEREAS, USX owns certain railroad track at the Fairless Industrial Park (hereinafter "Industrial Park Track"); and

WHEREAS, USX desires to retain Conrail as a rail operator to provide rail switching to present and future shippers in the Fairless Industrial Park; and

WHEREAS, Conrail is willing to provide rail switching service to such parties.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and intending to be legally bound, USX and Conrail agree as follows:

1. **Definitions.** The following capitalized terms as used herein shall have the following meaning:

"Adjoining Area" shall mean all of the area within eight (8) feet in each direction from the centerline of the Industrial Park Track.

"Fairless Industrial Park" shall mean real estate currently owned by USX in Fairless Hills, Pennsylvania, as set forth on Exhibit A, which is attached hereto and by this reference made a part hereof.

"USS Sheet & Tin" shall mean the steel finishing facility located in Fairless Hills, Pennsylvania, which is owned and operated by U.S. Steel Group, a unit of USX Corporation, as depicted on Exhibit A.

"Joint Use Tracks" shall mean: (1) rail track retained by USS Sheet & Tin in the North Yard; (2) track between the North Yard and the "fence" at USS Sheet & Tin; (3) a route through the USS Sheet & Tin facility, as designated by USS Sheet & Tin; (4) pending closure of the Fairless locomotive shop, a route from USS Sheet & Tin to the locomotive shop; and (5) pending completion of the Allied demolition project, such routes as may be required to permit USX to provide service to Allied scrap origins not identified in section 6 herein, which track and/or routes shall be used by USX to provide service to USS Sheet & Tin and by Conrail to provide service to the Fairless Industrial Park, as set forth on Exhibit A, which is attached hereto and by this reference made a part hereof.

"Conrail" shall mean Consolidated Rail Corporation, a Pennsylvania corporation with offices at 2001 Market Street, Philadelphia, PA 19101.

"Consideration" shall mean the consideration paid by Conrail to USX for the right to operate on the Industrial Park Track.

"Maintenance Contract" shall be a contract between USX and a third party contractor providing for the maintenance of Industrial Park Track.

"Maintenance Contractor" shall be the third party contractor which enters into the Maintenance Contract with USX.

"Service" includes, but is not limited to, picking up and delivering cars from or to the Trunk Line from or to a point within the Fairless Industrial Park.

"Shippers" shall mean all present and future shippers located at the Fairless Industrial Park, who originate and/or receive shipments by rail, excluding the USS Sheet & Tin facility.

"Industrial Park Tracks" shall mean the USX track at the Fairless Industrial Park operated by Conrail hereunder, as set forth in a sketch on Exhibit A, and the Adjoining Area, and all track, rails, switches, ties, beds, and improvements forming a part thereof, located therein or thereon or used in connection therewith.

"Trunk Line" shall mean Consolidated Rail Corporation and/or any other trunk line railroads which may in the future provide rail service to the Fairless Industrial Park.

"USX" shall mean USX Corporation, a Delaware corporation with offices at 600 Grant Street, Pittsburgh, Pennsylvania 15219-2749.

2. **Scope of Agreement.** This Agreement sets forth the terms and conditions pursuant to which USX shall retain Conrail as the operator of the Industrial Park Tracks in order to enable Conrail to provide Service to Shippers located at the Fairless Industrial Park. This Agreement does not relate to or affect rail transportation to or from USS Sheet & Tin, except to the extent that rights are granted herein to Conrail to operate over Joint Use Tracks which will also be used by USX to provide rail service to USS Sheet & Tin.

3. **Grant of Operating Rights.** USX does hereby grant to Conrail the right to operate the Industrial Park Track and the Joint Use Track, for the term and upon the conditions set forth in this Agreement. Track designated as Joint Use Track shall be subject to a mutually agreeable Joint Track Operating Agreement to be negotiated between USX (USS Sheet & Tin) and Conrail, which shall identify procedures for

communication between USX (USS Sheet & Tin) and Conrail, including procedures for communication in any emergency situation..

4. **Term.** The term of this Agreement shall commence on June 1, 1997, and it shall continue for its initial term through December 31, 1999. Following such initial term, the Agreement shall remain in effect on a year-to-year basis subject to cancellation at the end of the initial term or at any time thereafter on six months prior written notice to the other party.

5. **Operator.** Throughout the Term, Conrail shall have the right to be the operator of the Industrial Park Tracks for the benefit of all present and future Shippers, subject to the rights of USX as set forth herein. During the Term, USX shall not engage any other third party to operate the Industrial Park Tracks and/or Joint Use Tracks. Conrail understands that its rights as operator hereunder may be affected by USX's rights and obligations, and Shippers rights and obligations with respect to rail service (including, but not limited to the tenants' non-exclusive license for rail access), which are contained in USX's leases with tenants. A sample of the rail service provision in the leases is attached as Exhibit B. Conrail is also aware of the provisions of the decision of the Pennsylvania Public Utility Commission in Docket P-00920585, dated June 15, 1993. USX assigns to Conrail the obligation to move scrap generated by the Allied demolition project from points in the Fairless Industrial Park referenced in Section 6 to the interchange with Conrail.

6. **Consideration.** Conrail shall, in consideration of the rights granted herein, pay USX an easement fee of \$15,000.00 on or before December 31, 1997 and an easement fee of \$15,000.00 on or before December 31 of each succeeding year this Agreement remains in effect. If this Agreement is terminated during a calendar year,

the such easement fee shall be pro rated and paid as of the termination date. Conrail shall also, in consideration of the rights granted hereunder, move scrap generated by the Allied demolition project in the Fairless Industrial Park from the loading point located on track RM in the vicinity of the locomotive shop and from the loading point located on the RH track to the Trunk Line interchange at no charge to USX. Conrail shall have no obligation to move Allied scrap which is tendered at any other location. USX shall retain the obligation to move such scrap and may operate on Industrial Park Track to the extent that it is necessary to perform movements of Allied scrap from locations not specified herein.

7. **Rates.** During the term of this Agreement the compensation to Conrail for each movement of a rail car (loaded or empty) on USX track into and out of the Fairless Industrial Park shall be included in the current or future tariff and/or contract rates applicable to the line haul movement of such cars.

8. **Maintenance of Track.** USX hereby grants Conrail authority, as agent for USX, to solicit bids for and to negotiate a Maintenance Contract with a third party contractor, pursuant to which such Maintenance Contractor shall maintain Industrial Park Track for USX. The Maintenance Contract shall be subject to approval by USX and shall be executed by USX. Conrail, as agent for USX, shall be responsible for the administration of the Maintenance Contract. The Maintenance Contract shall provide for a flat monthly maintenance fee from Maintenance Contractor to USX. Conrail shall be responsible for the reasonable allocation of such fee to Shippers in the Fairless Industrial Park, for the billing to such Shippers of their share of such maintenance fee, and for the payment to the Maintenance Contractor of the fee. Collection risk from Shippers shall be with Conrail, and Conrail shall be obligated to pay the Maintenance Contractor all fees owed by USX to Contractor pursuant to the Maintenance Contract,

even if Conrail is unable to collect all or any portion of such fee from Shippers in the Fairless Industrial Park. Prior to the execution of the Maintenance Contract, USX shall be responsible for the maintenance and repair of the Industrial Park Track and the Joint Use Track. Conrail shall reimburse USX for expenses incurred by USX during such period to maintain and repair Industrial Park Track. During the term of this Agreement, the train operator (Conrail or USX) shall be responsible for derailments on Joint Use Track.

9. **Service.** Service by Conrail hereunder shall be of a quality similar to that provided by Conrail to shippers at other industrial parks similar to the Fairless Industrial Park served by Conrail.

10. **Conrail/Shipper Relations.** Conrail shall treat Shippers in a manner commercially similar to other comparable industrial park shippers served by Conrail in the region. Conrail shall be solely responsible for negotiating suitable commercial arrangements based on common transportation characteristics with Shippers for line-haul, terminal and accessorial freight charges, in order to maintain the competitive attractiveness of the Fairless Industrial Park.

11. **Environmental.** Conrail shall have no responsibility for pre-existing environmental conditions but will be responsible for environmental conditions arising out of its rail operations.

12. **Salvage of Track.** Tracks in the Fairless Industrial Park available for use, at Conrail's sole discretion, for salvage for useful materials, or for removal and sale as scrap, shall be identified by the parties, provided however, both salvaged materials and scrap proceeds shall be used, as agreed upon by USX and Conrail,

solely for the purpose of maintaining Industrial Park Track and/or constructing additional Industrial Park Track.

13. **Incentive Payment.**

In addition to the Consideration provided to USX by Conrail herein, Conrail will make to USX a single annual Incentive Payment recognizing USX's efforts to grow rail traffic within the Fairless Industrial Park. For the calendar year 1997, the period during which the Interim Rail Operating Service Agreement was in effect shall be included in the Incentive Payment calculation.

The Incentive Payment will be calculated as follows: For each new rail Shipper in the Fairless Industrial Park, which begins to utilize rail services provided by Conrail during the year, Conrail will pay USX the sum of \$5,000.00. In order to qualify for this Incentive Payment to USX such new rail Shipper must have made its first use of rail services provided by Conrail during the just concluded calendar year. Conrail will make no Incentive Payment on new rail served Shippers who do not satisfy this requirement.

Within 60 days following the end of each calendar year, USX will provide Conrail with a Letter Of Notification containing the names of new rail served Shippers, which first used rail services provided by Conrail hereunder during the just concluded calendar year. Conrail will verify the information provided by USX and make payment to USX for each Shipper which satisfies the requirement set forth herein, promptly upon receipt of the Letter Of Notification. If Conrail does not receive a Letter Of Notification by the close of the 60 day period following the end of the just concluded calendar year, USX waives its right to collect the Incentive Payment for that period.

14. **Indemnity.**

14.1 Conrail, for itself, its successors and assigns, agrees to defend, indemnify and hold harmless USX, USX's successors and assigns, and USX's agents, servants and employees from and against any and all claims, demands, damages, actions or causes of action at law or in equity, together with any and all losses, costs, or expenses and attorneys' fees, in connection therewith or related thereto, asserted by any entity, person or persons, including but not limited to employees of Conrail, for bodily injuries, death or property damage arising or in any manner directly or proximately growing out of the Service governed or controlled by this Agreement. Conrail agrees to fully perform and fulfill its obligations hereunder to defend, indemnify and hold harmless USX, USX's successors and assigns and USX's agents, servants and employees unless the alleged bodily injuries, death or property damage are caused by the sole negligence of USX. For the purpose of administering the indemnity provision in this paragraph 14, bodily injuries, death and/or property damage caused by Conrail's train operations, and/or the maintenance and repair of Industrial Park Track and/or the Adjoining Area shall be assumed to have been caused in part by Conrail. Conrail's indemnity obligation under this paragraph shall be limited to a maximum of five million dollars (\$5,000,000.00) and proceeds available from insurance coverage required by Article 13 hereunder shall be credited against and are agreed to fully satisfy Conrail's indemnity obligation pursuant to this paragraph.

14.2 In connection with any demands, claims or any other legal proceedings (whether at law or in equity) covered by this Article 14, USX and/or USX's agents, servants and employees retain the right to be represented, at their sole option, by attorneys of their own selection, at their own expense. The exercise of this right to select their own attorneys will in no way detract from or release Conrail from its obligation to indemnify and hold harmless USX and/or USX's agents, servants and

employees. The extent of Conrail's indemnity obligation shall not be limited to the amounts of the insurance coverage provided for in Article 15 of this Agreement.

14.3 In the event Conrail defaults on its obligations under this Article 14, Conrail agrees that it will be liable for all reasonable expenses and attorneys' fees incurred by USX to enforce the provisions of this Article.

14.4 Without limiting the above, Conrail hereby agrees to indemnify, defend (with counsel acceptable to USX) and hold harmless USX from and against any and all expense, damage, loss or liability incurred by USX arising from the application or claim of application to the Industrial Park Track of any state or federal oil, toxic, or hazardous substances or waste statute, law, or regulation, now or hereafter enacted (including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq. and any amendments thereto, and any other applicable federal or state environmental statute, law or regulation). Conrail's liability hereunder shall survive the termination of this Agreement whether terminated by an agreement, expiration, judgment, or otherwise, but in no event shall Conrail's liability extend to losses resulting directly from affirmative acts of USX or arising out of any ground water, soil or other environmental contamination that occurred prior to the Commencement Date. If Conrail transports any hazardous materials on the Industrial Park Track, it shall do so in compliance with all applicable federal and state laws and/or regulations.

15. **Insurance.**

15.1 Conrail shall maintain and require its Subcontractors, if any, to maintain in full force and effect throughout the entire term of this Agreement, insurance coverage in an insurance company or companies satisfactory to USX and possessing an A.M. Best Company rating of A-, Class VI or better, insuring:) Conrail's obligations under Article 14 of this Agreement..

15.2 Said policies of insurance (i.e., Comprehensive General Liability, Automobile Liability and Umbrella/Excess Liability Policies) shall be endorsed to include USX as an additional insured on a primary and non-contributory basis, and the insurance carrier shall promise to defend USX and/or USX's agents, servants, and employees and provide insurance coverage of not less than Five Million Dollars (\$5,000,000) for personal injury, bodily injury or death arising out of any one occurrence and not less than Five Million Dollars (\$5,000,000) for property damage arising out of any one occurrence. Said Comprehensive and Umbrella/Excess Liability policies shall be endorsed utilizing ISO Form B, CG 20-10 (pre-1993 form) or equivalent language to such Form. If, and to the extent that, the insurance coverage provided by Conrail pursuant to this Article is issued on a combined single limit basis, then said insurance coverage shall provide for not less than a Five Million Dollars (\$5,000,000) combined single limit for personal injury/bodily injury/death/ property damage arising out of any one occurrence, with minimum aggregate limits of not less than Ten Million Dollars (\$10,000,000).

15.3 Said insurance policies shall provide a defense and coverage to USX, as required to satisfy Conrail's obligations pursuant to Article 14.

15.4 The provisions of this Article 15 shall be enforceable and Conrail shall be bound thereby regardless of whether or not the indemnity provisions of Article 14 of this Agreement are determined to be enforceable in the jurisdiction in which the Service covered under this Agreement is performed.

15.5 Conrail shall maintain, and require its subcontractors, if any, to maintain, in full force and effect throughout the entire term of this Agreement, (i) Workers' Compensation Insurance and Federal Employers Liability Act coverage providing compensation for occupational diseases and for injuries sustained by or death resulting to employees of Conrail or its subcontractors, as required by law, including the laws of the Commonwealth of Pennsylvania and (ii) Employer's Liability Insurance

and/or Stop Gap Liability coverage with limits of not less than \$1,000,000.00 each accident, \$1,000,000.00 disease-policy limit, and \$1,000,000.00 disease each employee.

15.6 The above described insurance coverage to be provided by Conrail hereunder will extend coverage to all Service or Services performed by Conrail during the term of and governed by this Agreement, including any other contract(s) or purchase order(s) or agreement(s) as provided under this Agreement (whether written or oral) between Conrail and USX.

15.7 (a) Prior to the commencement of any Service or Services on USX's premises, Conrail and all subcontractors, if any, shall furnish to USX satisfactory Certificates of Insurance evidencing full compliance with the requirements of this Article 15. The Certificates of Insurance must show that the above required insurance is in force, the amount of the carrier's liability thereunder, and must further contain the "Cancellation" clause as specified in Article 15.7(b) below. Moreover, the Certificate of Insurance shall affirm that the contractual liability insurance being provided encompasses "broad" form indemnity clauses.

(b) The following clause shall appear in the "Cancellation" section of the Certificates of Insurance:

Should any of the above-described policies be canceled, or should a request be made to delete the certificate holder herein as an additional insured under the policies, the issuing company will, by certified or registered mail, attempt to afford sixty (60) days advance written notice to the certificate holder herein, prior to effecting any such cancellation, and/or deletion described above.

(c) All Certificates of Insurance shall be in form and content acceptable to USX and shall be submitted to USX pursuant to this Article 15.7(a) in a timely manner so as to maintain Conrail's full compliance with the stated insurance

requirements hereunder throughout the entire term or duration of this Agreement. The Additional Insured Endorsement in USX's favor shall contain no broad form restriction or exclusion of coverage based upon USX's fault or negligence, and such endorsement shall provide that the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by USX.

(d) Any failure on the part of USX to pursue or obtain the Certificates of Insurance required hereunder from Conrail and/or the failure of USX to point out any non-compliance of such Certificates of Insurance shall not constitute a waiver of any of the insurance requirements in this Agreement nor relieve Conrail of any of its obligations or liabilities hereunder.

(e) USX shall be entitled to rely on any Certificates of Insurance delivered to it on behalf of, or by Conrail as conclusive evidence that the insurance required hereunder is in effect, and such Certificates shall be deemed to be part of the applicable insurance policies.

15.8 All policies of insurance shall be endorsed whereby the insurer waives any and all rights of subrogation against USX.

15.9 All insurance coverage carried by Conrail shall extend to and protect USX to the full amount of such coverage, and all deductibles and self-insured retentions (if any), including those relating to defense costs, shall be the sole responsibility of Conrail.

15.10 In addition to its other remedies, USX may, at its sole option and without liability to Conrail, suspend the Service and/or exclude Conrail from USX's premises until Conrail furnishes satisfactory evidence of its full compliance with the provisions of this Article 15.

15.11 The obligation of Conrail to provide the insurance herein above specified shall not limit in any way the liability or obligations assumed by Conrail elsewhere in this Agreement, except as set forth in Article 14.1

15.12 In the event Conrail or its insurance carrier defaults on any obligations under this Article 15, Conrail agrees that it will be liable for all reasonable expenses and attorneys fees incurred by USX to enforce the provisions of this Article 15.

15.13 Conrail may choose to self insure instead of purchasing insurance as contemplated herein, provided however, that in such event the protection provided to USX shall be no less than if insurance had been provided as set forth herein.

16. **Compliance with Legal Requirements.** Conrail covenants throughout the term of this Agreement, at Conrail's sole cost and expense, to comply with all laws and ordinances and notices, orders, rules, regulations and requirements of all federal, state and municipal governments, governing the rail service provided by Conrail hereunder, including (without limitation) all laws relating to railroads, health and safety, and environmental matters, whether foreseen or unforeseen, ordinary as well as extraordinary. Conrail shall likewise observe and comply with the requirements of all policies of public liability, and all other policies of insurance at any time in force with respect to this Agreement.

17. **Waiver.** The failure of USX or Conrail to insist in any one or more instances upon the performance of any of the covenants or conditions of the Agreement or to exercise any right or privilege herein conferred shall not be construed as thereafter waiving or relinquishing any such covenants, conditions, rights or privileges and the same shall continue and remain in full force and effect, and waiver of one default or right shall not constitute waiver of any other default.

18. **Grace Period.** Notwithstanding anything hereinabove stated, it is understood and agreed that neither party hereto will exercise any right or remedy

provided for in the Agreement or allowed by law because of any default of the other, unless such party shall have first given written notice thereof by registered mail to the other, and the other, within a period of thirty (30) days thereafter, shall have failed to pay the sum or sums due if the default consists of the failure to pay money, or if the default consists of something other than the payment of money, shall have failed, within thirty (30) days thereafter to begin and actively and diligently in good faith to proceed with the correction of the default until it shall be fully corrected.

19. **Notices.** All notices required or permitted hereunder from either of the parties to the other shall be in writing and sent by (1) hand delivery , (2) registered mail, return receipt requested, postage prepaid, (3) overnight delivery service which provides proof of delivery; or (4) telecopy with a duplicate copy sent via first class mail, addressed as follows:

Notices to Conrail shall be addressed to:

Consolidated Rail Corporation
John D. Titterton, Manager Planning
Conrail - Metals Business Group
2001 Market Street
Philadelphia, PA 19101
Telephone: 215/209-7724
Telecopy: 215/209-7832

Notices to USX shall be addressed to:

USX Realty Development
Dennis L. McCartney
General Manager-East
20 Steel Road South
Morrisville, PA 19067-3614
Telephone: 215/736-3650/3659
Telecopy: 215/736-3940

and

USX Corporation - U.S. Steel Group
George J. Klein
General Manager - USS Sheet & Tin
Fairless Hills, PA 19030
Telephone: 215/736-4201
Telecopy: 215/736-4417

Either party may at any time, in the manner set forth for giving notices to the other, set forth a different address to which notice to it shall be sent.

20. **Arbitration.** USX and Conrail agree that any dispute between them arising from this Agreement will be arbitrated by the American Arbitration Association at their Philadelphia offices and before a single arbitrator.

21. **Independent Contractor.** The relationship of Conrail to USX under this Agreement shall be solely that of independent contractor. Nothing contained herein shall be deemed to constitute or create a relationship of agency, joint venture, partnership or any relationship other than that as specified herein. Conrail shall be solely responsible for the hiring, discharge and payment of its employees. Conrail shall secure all necessary permits and licenses related to such employment and shall provide for payment of all Workers Compensation and/or FELA obligations, and all taxes and contributions for unemployment insurance, social security, etc. required in the performance by Conrail of service covered by this Agreement. Conrail shall indemnify and save harmless USX from any and all claims for such payments, taxes or contributions.

22. **Audit.** Conrail shall maintain, in accurate and complete order, books and records related to expenses related to the maintenance and repair of Industrial Park Track and related to the number of cars moved by Conrail for each Shipper each month

on Industrial Park Track. Such books and records shall be open to inspection and/or audit by representatives of USX during reasonable business hours during the life of this Agreement and for a period of three years thereafter.

23. **Assignability.** Neither party shall assign any of its rights and obligations hereunder without the prior written consent of the other party, provided however, Conrail may, without the consent of USX, assign to any successor in interest to Conrail's line haul rail operations at Fairless, and USX may assign, in whole or in part, without the consent of Conrail, to any successor in interest to USX's ownership interest in the Fairless Industrial Park.

24. **Severability.** If any provision of this Agreement is found invalid, the remainder of this Agreement shall stay in full force and effect.

25. **Captions.** It is agreed that the captions of the Agreement are for convenience only and are not a part of the Agreement and do not in any way limit or amplify the terms and provisions of the Agreement.

26. **Governing Law.** This Agreement shall be governed and construed in accord with the laws of the Commonwealth of Pennsylvania, excluding its conflict of laws provisions.

27. **SMS Warranty.** USX has provided Conrail with a separate letter which warrants that USX has, or had, no legally binding agreement with SMS/Penn Jersey under which SMS/Penn Jersey would have performed the same or similar rail transportation services USX has agreed Conrail will provide.

28. **Entire Agreement.** It is expressly understood and agreed by and between the parties hereto that this Agreement and the exhibits attached hereto set forth all the promises, agreements, conditions and understandings between USX and Conrail with respect to the Conrail's operations on the Industrial Park Tracks and the Joint Use Tracks, and that there are no promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. On the effective date of this Agreement, all prior agreements between the parties concerning the subject matter hereof, including, but not limited to, the Interim Rail Operating Service Agreement, dated January 6, 1997, shall be cancelled. It is further understood and agreed that no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon USX or Conrail unless reduced to writing and signed by them.

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

USX CORPORATION

By:



Charles C. Gedeon

Title: Executive VP-Raw Mtls. & Div. Bus.

CONSOLIDATED RAIL CORPORATION

By:



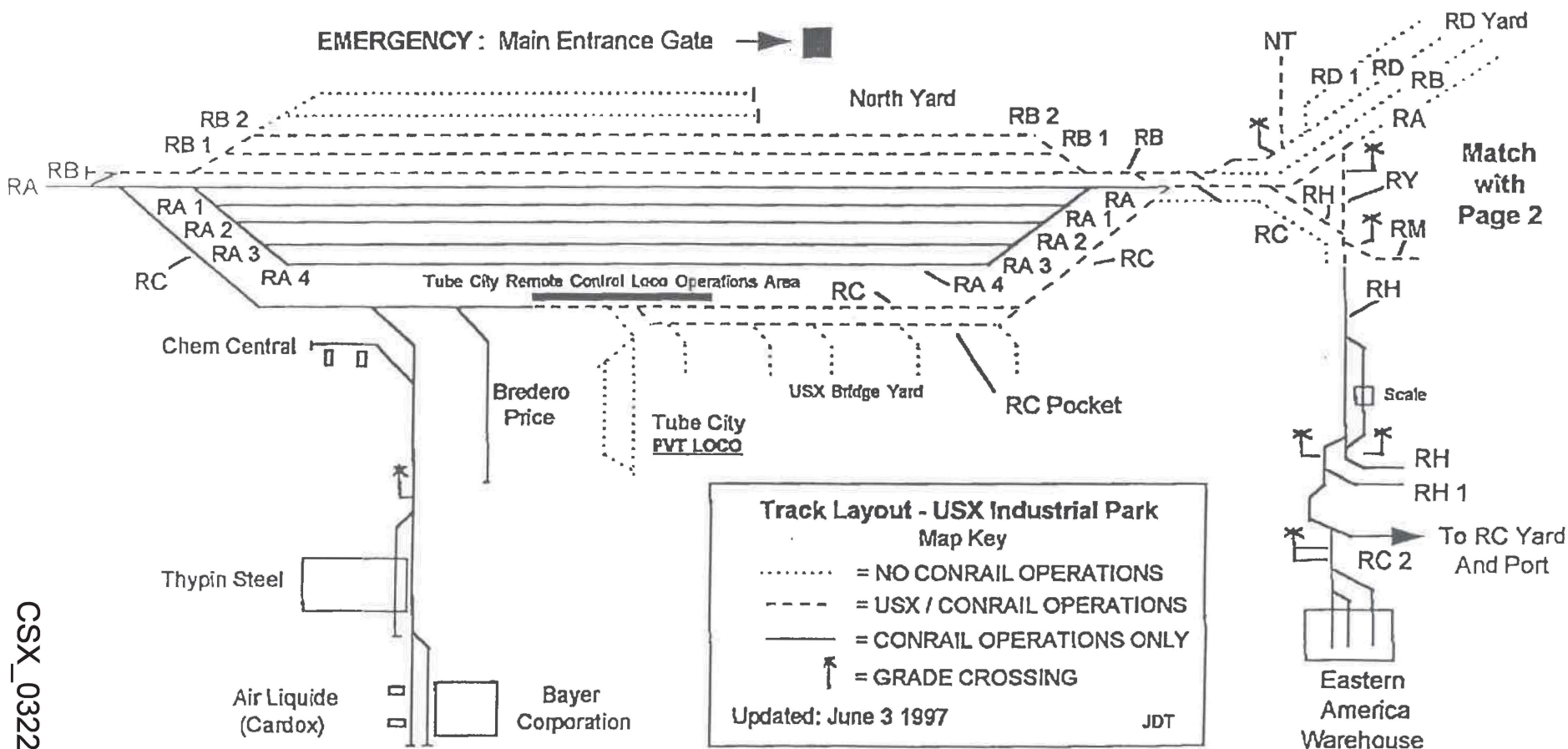
Douglas R. Greer

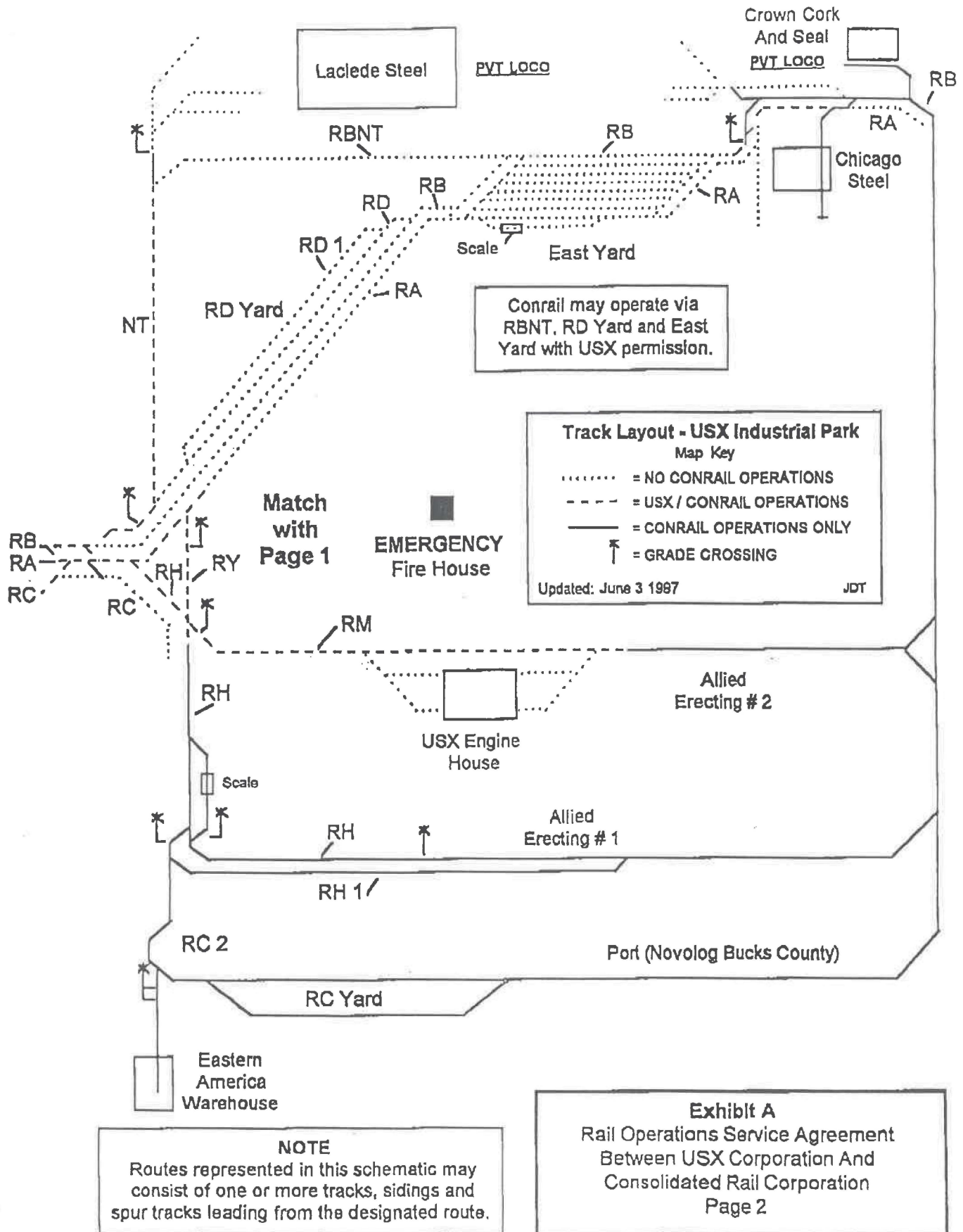
Title: General Manager-Philadelphia Division

Exhibit A
Rail Operations Service Agreement
Between USX Corporation And
Consolidated Rail Corporation
Page 1

NOTE
 Routes represented in this
 schematic may consist of one
 or more tracks, sidings and
 spur tracks leading from
 the designated route.

Conrail may operate via
 RBNT, RD Yard and East
 Yard with USX permission.





CSX_03225

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CSX Transportation, Inc.

Plaintiff,

v.

B&J Group, Inc.

Defendant.

CASE NO: 2:17-CV-05296-CMR

PROPOSED ORDER

IT IS HEREBY ORDERED that Defendant B&J Group, Inc.'s, Motion for Summary Judgment is **DENIED** and that Plaintiff CSX Transportation, Inc.'s, Motion for Summary Judgment is **GRANTED**.

It is further **ORDERED** that Judgment is hereby entered in favor of CSX Transportation, Inc., and against B&J Group, Inc., in the amount of \$89,575 plus applicable late fees at a rate of 10% and finance charges at a rate of 12% per annum from the due date of each unpaid invoice until the date of this Order.

DATED this _____ day of _____, 2019.

IT IS SO ORDERED:

J.

EXHIBIT C



8100

CSX
TRANSPORTATION

PUBLICATION
CSXT 8100

Terms and Conditions of
Service & Prices for Accessorial Services

CSX

Effective: April 1, 2026

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SECTION 1

INTRODUCTION

CSX Transportation provides comprehensive freight transportation solutions with an unyielding focus on safety, reliability, and efficiency. Our extensive rail network reaches nearly two-thirds of the U.S. population, serving large metropolitan areas in 26 states east of the Mississippi River and the District of Columbia, as well as the Canadian provinces of Ontario and Quebec. CSX also links more than 240 short line and regional railroads and more than 70 ocean, river, and lake ports with major population centers and farming towns alike.



RULES

GENERAL RULES (1.1)

Thank you for partnering with CSX Transportation, Inc. (“CSXT” or “the company”) for your freight and logistics needs. The purpose of this publication is to provide our Customers and their customers with a clear understanding of the rules and fees associated with our network, including charges for switches, demurrage, weighing, and private railcar storage fees.

The Terms and Conditions of Service published here apply to all transportation services provided by CSXT and all railcars while on our network and the tracks of Conrail while under a CSXT waybill. If your shipment involves interline service, the rules, terms, and conditions of service published by each other participating Carrier apply once your shipment enters its network.

These Terms and Conditions supersede and replace the former Tariff 8100 and its predecessors. Specific terms and conditions for line-haul transportation, including rates, are published in commodity-specific price lists, price quotes, and contracts. In the event of any conflict between the terms found here and any other CSXT publication or contract, the terms of the other CSXT publication or contract takes precedence.

By arranging for services with CSXT, a Customer, or any third party acting under the direction or on behalf of a Customer, authorizes and accepts all the rules,

requirements and applicable charges contained within this publication. In addition, any action taken by a Customer, or any other Carrier, that:

- Initiates,
- Accepts delivery of, or
- Affects a movement or supplemental service in CSXT’s network

...also constitutes acceptance by that Customer or Carrier of all rules, requirements and applicable charges established here. Services expressly described herein are the only common carrier services offered by CSXT.

Applicability and Interpretation (1.1.1)

Unless explicitly stated otherwise in an existing publication or contract, all references made to a former Tariff CSXT-8100 or its predecessors now refer to the specifics established here.

In these Terms and Conditions:

- References to Section numbers in these Terms and Conditions refer to the content they denote (Specific item numbers that may have been updated or changed are referenced for your convenience in a corollary document on [CSX.com](https://www.csx.com))
- Capitalized terms not otherwise defined within these Terms and Conditions are defined in the Glossary appearing in Section 9.4

SECTION 1, CONT.

RULES

- Anywhere it states that CSXT “may” act, the use of “may” means the action is at CSXT’s discretion

In the event that any term, condition, or requirement of these Terms and Conditions is found to be void or unenforceable, such findings shall not be construed to render any other term, condition, or requirement of these Terms and Conditions either void or unenforceable, and all other terms, conditions, and requirements shall remain in full force and effect.

Station Lists and Conditions (1.1.2)

These Terms and Conditions incorporate the Station condition requirements set forth in Tariff OP SL 6000-Series. These include requirements for:

- Addition and abandonment of Stations
- Changes in Station names
- Restrictions on the acceptance or delivery of freight
- Changes in Station facilities

If a Station is abandoned, the rates to and from that Station are inapplicable on and after that date.

Inclusion of Tariffs, Items, Notes, Rules, etc. (1.1.3)

These Terms and Conditions incorporate the non-conflicting provisions of the Uniform Straight Bill of Lading, as well as CSXT’s other rules, all applicable statutes, regulations, AAR and other industry standards, requirements, and procedures that would apply without being specifically listed.

For more specific provisions regarding particular Commodities, see:

CSXT 4048 – with rules regarding Hazardous Waste
CSXT 4049 – with rules regarding Hazardous Materials
CSXT 8082 – with rules regarding private railcars in coal service
CSXT 8200 – with rules regarding coal, coke and iron ore

Force Majeure (1.1.4)

CSXT and Customers are excused from their obligations under these Terms and Conditions to the extent prevented or delayed by a Force Majeure Event. The

party claiming force majeure must notify all parties as soon as practical upon the beginning and ending of the force majeure condition.

Force Majeure Events include Acts of God, authority of law, labor disputes, pandemic or other public health emergency, weather impediments, fire, explosion, war, insurrection, threatened or actual acts of terrorism or other like causes beyond one’s reasonable control. Downturns in the economy and changes in market conditions are NOT considered force majeure conditions.

Electronic Information Sharing and Notices (1.1.5)

CSXT maintains an online system, ShipCSX, to help Customers plan, ship, trace, and pay for their Shipments. CSXT also provides notices relating to railcar arrival and placement through ShipCSX. Customers needing access to ShipCSX can contact our Customer Solutions team at 1-877-SHIPCSX (1-877-744-7279). Customers must maintain accurate e-mail addresses on file with CSXT to permit the delivery of electronic notices.

- “In writing” notifications can include e-mail or other electronic communications. CSXT may make use of Customer online systems to facilitate the provision of services to customers. Customers agree that any click-through agreements required to access such systems shall not be applied to CSXT or any shipments tendered to CSXT.

Charges in U.S. Dollars (1.1.6)

All charges are in U.S. Dollars, except when expressly listed in Canadian Dollars. Any service without a specific Canadian price and listed in this Publication will be provided in Canada, at the rates set in U.S. dollars, then adjusted for the exchange rate and Canadian taxes prior to billing.

Charges are Cumulative (1.1.7)

All charges established by these Terms and Conditions are cumulative, and may be assessed in any combination.

Agents (1.1.8)

CSXT may rely on the actions and representations of a Customer’s Agents.

Terms of Contract Carriage (1.1.9)

When a Customer tenders a Shipment pursuant to a Shipment Instruction that references a private price not otherwise incorporated into a contract then in effect, the terms of CSXT's general transportation terms shall apply. Those terms are available at <http://www.csx.com/index.cfm/customers/prices-tariffs-fuel-surcharge/> and then click "CSXT Private Price List and Contract"

Rebilling of Charges (1.1.10)

Occasionally CSXT incurs costs or is billed for charges due to the actions of Customers or other railroads. CSXT may bill or rebill (pass through) such charges to the party responsible for CSXT's costs or CSXT being billed, and such party is responsible for the payment of those charges.

SERVICE RULES (1.2)

Shipping Instructions (1.2.1)

CSXT accepts Shipping Instructions and accessorial service requests delivered through ShipCSX.com or via previously agreed-upon means of Electronic Data Interchange.

The following services are not available:

- Railcars tendered as Held for Inspection, Order, or Order Notify
- Railcars consigned in any manner that requires CSXT to hold a railcar and not make delivery until a proper release order, or security (in accordance with Uniform Freight Classification, Rule 7) for the goods, is provided

Line-Haul Transportation Service (1.2.2)

CSXT defines line-haul transportation as the movement of one or more railcars from station to station; the pulling of the railcar(s) from the origin and placement of the railcar(s) at the destination; and includes the movement of an empty Private Car back to its origin or another specified destination if such return movement occurs within six months of the most recent outbound, loaded move. CSXT establishes each location's service schedule.

- Private Cars are automatically reverse routed to their last point of origin or interchange.

Exceptions not covered by auto reverse route which require shipping instructions to be sent to CSXT:

- Destination of the empty car is other than the origin of the load
- Billing date of inbound loads that exceed 120 days for private equipment or 30 days for railroad equipment are no longer available to auto reverse route
- If loaded shipment is rejected by consignee
- Changes in routing of empty railcar movements are Diversions
- Railcars with more than 1,000 pounds of lading, and certain international moves, are not considered empty, and may require a separate Shipping Instruction

All line-haul transportation service is provided with reasonable dispatch pursuant to carrier-determined routes.

Updates of Universal Machine Language Equipment Register ("UMLER") (1.2.3)

When a Customer tenders a railcar they own or lease to CSXT, the Customer must:

- Update the UMLER to reflect the Customer's interest in the railcar; or
- Provide real-time access to its system for identifying their railcars to CSXT

Diversion, and Other Changes to Shipping Instructions (1.2.4)

In a fluid marketplace, we understand that plans may change and Customers may need to request a Diversion or other changes in their Shipping Instructions. CSXT may charge \$275 per railcar, or \$2,750 for blocks of 10 or more railcars, for a Reconsignment or a customer requested change CSXT makes to each affected Shipping Instruction that does not affect the movement of the Shipment. In order to protect the efficiency of our network, CSXT will assess a fee of \$275 per railcar diverted or involved in the change of instruction for each Shipping instruction, or \$2,750 for blocks of 10 or more railcars on a single Shipping instruction.

- Each Diversion request or other requests for changes in a Shipping Instruction will only be accepted from the Freight Payer or its Agent, and

- The Freight Payer is responsible for any and all additional line-haul and other charges resulting from the Diversion. Diversion results in (a) increases in handlings by CSXT, or (b) the Shipment traveling farther than indicated by the original Shipping Instructions indicated.

A customer's initial instructions for the routing of a railcar after its then-current load has been unloaded is not a Diversion. Any subsequent changes to that empty routing is a Diversion.

In order to serve you with the best possible transportation solution, we will exercise commercially reasonable efforts to execute a Diversion request while the railcar is in our possession. However:

- We reserve the right to refuse a request for Diversion
- We cannot accept Diversion requests when the affected railcar(s) have reached an interchange with another railroad or a serving yard

Diversion orders should be:

- Submitted through ShipCSX
- Emailed to CSRDiversions@csx.com

Other Changes to Shipping Instructions (1.2.5)

We understand that errors may occur in the creation of waybills and Customers may need to request that we correct those errors in their Shipping Instructions. CSXT may charge \$275 per railcar, or \$2,750 for blocks of 10 or more railcars, for making a customer requested change to each affected Shipping Instruction. These changes include corrections of weights and any other changes to shipping instructions.

Late Delivery of Shipping Instructions (1.2.6)

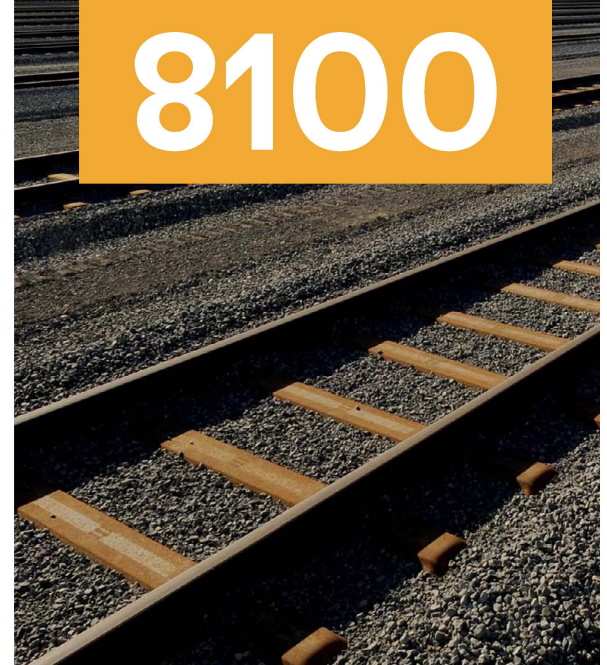
Customers have the responsibility to accurately and timely submit Shipping Instructions. If a loaded railcar reaches a CSXT yard without complete Shipping Instructions, a late fee of \$625 per railcar may be assessed.

Safe Transportation Of Food (1.2.7)

Customers have the responsibility to ensure compliance with the obligations, if any, imposed by the Sanitary Food Transportation Act and its implementing regulations, including all the requirements of 15 C.F.R. Subpart O, §§1.900-1.934.

EQUIPMENT RULES (1.3)

In order to provide customers with quality rail service, a railroad must be able to provide customers with railcars promptly and in operational condition. We appreciate your efforts to help us manage and protect our fleet by reserving the number of Carrier Cars you actually need and by returning Carrier Cars in the same clean, functional condition you expect to receive them.



SECTION 1, CONT.

RULES

Car Ordering Rules (1.3.1)

Railcars can be ordered only for days a Customer is served by CSXT. Customers should not order more railcars than their facility can accept. To facilitate Customer railcar order planning, CSXT indicates each plant's railcar capacity in the Inventory Management module in ShipCSX.

- Railcar orders can be submitted up to five weeks in advance of the specified order date, and will expire five calendar days after the order date, if not filled
- Customers must renew orders if expired and railcars are still needed for loading
- To increase or decrease a railcar order less than fourteen days before the order date, the Customer must submit a change request via the Carrier Car Order screen on ShipCSX. Decreases in ordered railcars may be subject to charges set out in section 1.3.2
- CSXT will use commercially reasonable efforts to fulfill a changed railcar order
- No changes to a railcar order can be implemented on the order date or processed for the following day

Empty Carrier Cars Ordered and Not Used (1.3.2)

For each Railcar ordered for loading that is cancelled less than seven calendar days prior or up to three calendar days after the order delivery date, Customer shall be subject to a charge of \$375 per car.

Railcars refused upon placement without cause, or notification of availability for placement, will be considered cancelled. When an empty railcar has been placed for loading and is subsequently Released to CSXT without cause or being used in revenue service, the service of placing and pulling the empty railcar will be subject to a charge of \$375 per railcar. A Railcar cancelled after placement in industry will also be subject to demurrage.

Fees will not be applied to Railcars ordered and rejected due to mechanical faults. Fees will also not be applied to cars ordered and rejected due to the Railcar being dirty, provided that the Customer provides photographs to document the dirty condition of the Railcar.

Safe Loading of Railcars (1.3.3)

All railcars must be loaded in a safe and secure manner, in compliance with all laws, and in accordance with Association of American Railroad and CSXT rules and

standards. Customers are liable for all damage, including damage to CSXT's track and equipment, and all costs incurred by CSXT that result from the improper loading of a railcar. Customers are also liable for all damage to Carrier Cars while in their possession. Customers and/or car owners are liable for costs associated with adjustment, transfer, or proper disposal of lading that results from railcar defects.

If you have any questions about loading railcars, please contact CSXT's Load Engineering and Design team at:

- 1-800-432-1032; or
- LEADS@csx.com

For loading hazardous materials or loading tank cars, please contact our HazMat team at FRAHMReports@csx.com.

A railcar is unsafely loaded if it is not in compliance with the AAR rules as stated and/or it contains lading that is improperly secured, is leaking, or is unbalanced or if it exceeds the physical limits of the railcar (including being overloaded by weight or by volume). A railcar with liquids (including liquefied gasses) is unbalanced if it is not properly emptied or completely filled with the proper outage in the vapor space. Partial loads are not permitted. A railcar is considered overloaded when it exceeds the railcar weight or track weight limits related to the route that the shipment will take. CSXT may take immediate action to secure an unsafely loaded railcar. If a railcar is unsafely loaded, to the extent practicable, the Customer will be notified and given an opportunity to take corrective action.

- If CSXT determines that a railcar is unsafe to move because it is unsafely loaded, we will work with the Customer to facilitate a weight reduction, load transfer or load adjustment. Unsafely loaded railcars may be moved to an isolated track for securement or correction, at Customer expense
- Within 48 hours of receipt of notification that a railcar is unsafely loaded, Customers should provide CSXT with a written plan for the correction of the unsafe situation. If, after 48 hours, no such corrective instructions are received, CSXT shall be deemed to be authorized to take an action to correct the unsafe situation. Customer shall be responsible for the costs of any contractor retained by CSXT to adjust the load, plus a 15% handling fee

- CSXT may apply a fee of \$5,000 for the first offense, \$10,000 for the second offense, and \$15,000 for each subsequent occurrence involving unsafely loaded railcars.
- Unsafely loaded railcars shall be subject to demurrage charges until corrective action is completed
- If an additional railcar is needed to transport part of the unsafely loaded railcar's lading, the rate for transporting that extra railcar will be determined as if it were traveling the originally billed route under the same commodity-specific public price or private contract price as the original unsafely loaded railcar.

Inspections or Adjustments (1.3.4)

If CSXT is requested to do an inspection, or to make any mechanical adjustments (including, without limitation, tightening bolts, closing gates/doors/hatches, etc.), CSXT may apply a charge of a minimum of \$2,650 for each railcar inspected or adjusted.

Proper Billing of Hazardous Materials (1.3.5)

Customers and Carriers each have responsibilities for ensuring that the billing information for Hazardous Material cargoes is complete and in compliance with applicable laws. Customers are responsible for providing accurate information describing the Hazardous Materials prior to tendering the railcar to CSXT. Failure to provide such information poses an unacceptable risk to the public, and we may charge \$3,000 for each (i) railcar loaded with a Hazardous Material, or (ii) empty railcar that may contain Hazardous Material residue which tendered to CSXT with incomplete or erroneous waybill data, or without all information required by any governmental agency for the safe transportation of Hazardous Materials.

Return Empty Hazmat Cars to Origin (Hazardous Auto-Reverse Program) (1.3.6)

Hazardous material cars, whether full or empty, cannot be moved without shipping instructions.

The Hazardous Auto-Reverse (HAR) Program automatically generates shipping instructions for empty hazmat cars that are returning to their origin, when you submit an empty pull/release request via ShipCSX, EDI, or API. CSX Transportation customers are automatically enrolled in this program. HAR generates empty-return shipping instructions, hazardous residue waybills, based on the previous loaded waybill information for moving the car. You can receive an electronic copy of the 49 CFR compliant waybill via ShipCSX Trace tools. This waybill

must be retained at your facility location for the period of time designated in the current 49 CFR.

You must review the waybill for inaccurate or incomplete information. If there are discrepancies, please notify CSX by creating a ShipCSX Shipment Problem Resolution case. If you are not able to obtain a copy of the HAR empty waybill in ShipCSX within two hours of release, please submit shipping instructions via EDI or ShipCSX as soon as possible.

EXCEPTIONS NOT COVERED BY HAR PROGRAM which require shipping instructions to be sent to CSXT:

- Destination of the empty car is other than the origin of the load
- Car has been cleaned and purged of hazardous material
- Billing date of inbound loads that exceed 180 days for private equipment or 30 days for railroad equipment are no longer available to create HAR billing
- If loaded shipment is rejected by consignee

For assistance, call Customer Service at 1-877-ShipCSX (1-877-744-7279), options 2-1-5.

Releases of Non-Hazardous Materials (NAR) (1.3.7)

A non-accident release occurs when there is a release of a non-hazardous material while being transported, such as spilling over sides or the unintentional opening of doors and/or hatches that were not properly secured from origin, while in railroad possession that is not caused by a derailment, collision or other rail related accident.

When a non-accident release of a non-hazardous product occurs, CSXT acts promptly to address the situation and may incur environmental or other clean-up costs, including from service disruptions and crew/locomotive expenses from moving affected Railcars to a secure location. CSXT may charge a railroad owner, consignor, or freight payor for any and all costs incurred during the response, clean-up, remediation, and switching or repositioning of Railcars resulting from a non-accident release. The minimum charge for responding to a non-accident release, including the switching or repositioning of cars involved in a non-accident release, is currently \$2,575/railcar per event. Please refer to Publication 4049 for Hazardous Non-accident release (NAR) and the charge of \$5,000.

Safe Return of Empty Railcars (1.3.8)

All railcars must be returned in a safe and secure manner, in compliance with all laws, and in accordance with Association of American Railroad and CSXT rules and standards, including the closing of all doors and hatches, and the securement of all cables and other dunnage. Customers are liable for all damage, including damage to CSXT's track and equipment, that results from failing to safely return an empty railcar. Customers are also liable for costs associated with adjustment, or securing of cables and dunnage in empty railcars they release to CSXT.

Cleaning Requirements for Carrier Cars (1.3.9)

With the exception of railroad-owned securement devices, each Carrier Car must be completely unloaded, clean and have all doors and hatch covers properly closed and secured prior to being released as "empty."

Customers are responsible for all charges arising from the Release of a Carrier Car that is not empty and clean, including charges for cleaning the Carrier Car and getting the Carrier Car to the nearest clean-out facility. The minimum charge for services of this type is \$350.

Furnishing Carrier Railcars That Subsequently Move on Another Carrier (1.3.10)

CSXT furnishes Carrier Cars with the expectation that Customers will use them to load and Tender Shipments that include CSXT in the line-haul. When a Customer requests a Carrier Car that CSXT provides, and that Customer tenders to another carrier, CSXT may charge, and the Customer agrees to pay, a fee of \$2,750 per Carrier Car for adverse loading.

Furnishing Carrier Cars for Switch Movements (1.3.11)

CSXT does not furnish Carrier Cars for use solely in intra-plant, or intra-district switching.

Limitations on Reloading Carrier Cars (1.3.12)

Carrier Cars may not be reloaded without the prior permission of CSXT.

Treatment of Articulated Cars (1.3.13)

For counting purposes, articulated railcars are considered the number of railcars equal to the number of separate segments that have been joined together.

Non-CSXT Served Customer Car Orders (1.3.14)

All requests for railcars should be submitted to the Carrier that delivers railcars to the ordering facility in accordance with AAR Rule 15.

Cars Must Be Loaded to be Unloaded from Either Side (1.3.15)

Lading must be loaded and secured so as to permit unloading from either side of the railcar.

Excessive Private Railcars (1.3.16)

CSXT may send Private Railcars to the storage facility in accordance with AAR Circular OT-57. Any such move shall be subject to empty railcar line-haul and other applicable charges. Refer to Circular OT-57 for additional information regarding the application process and other relevant requirements.

RELATIONSHIP WITH OTHER RAIL CARRIERS (1.4)

For the convenience of Customers, CSXT has and will from time to time coordinate with other rail carriers for the transportation of cargo. When CSXT coordinates such transportation, whether by contract or pursuant to that rail carrier's tariff, those arrangements are made solely so that our customers do not have to arrange and contract with those rail carriers. In entering such contracts and/or tendering railcars under that tariff, and paying for the services of those rail carriers, CSXT is acting as the disclosed agent of the Customer. CSXT does not seek such transportation on its own behalf, and any such other rail carrier is not CSXT's agent in completing the transportation. CSXT does not assume or accept any responsibility or liability for the actions of any other rail carrier with regard to the transportation of any cargo. All such liability is solely the responsibility of the rail carrier whose actions give rise to the claimed liability. Each common carrier by rail is only responsible for the transportation services provided on its network.

SECTION 2

DEMURRAGE AND PRIVATE CAR STORAGE

Demurrage and Private Car Storage fees help railroads maintain efficient networks by encouraging the timely loading, unloading and release of railcars.

Demurrage is applied to Carrier Cars that are held for Customer instructions, including those waiting to be loaded or unloaded while at origin or destination. Private Car Storage fees are applied to Private Cars waiting on a railroad's tracks; usually for loading, unloading, or Shipment Instructions. Together, they help prevent railcars that you may need from sitting idly and ensure that our network doesn't become clogged with unused railcars.

DEMURRAGE (2.1)

Calculating Demurrage (2.1.1)

CSXT calculates and bills Demurrage on a monthly basis using a debit/credit system. Carrier Cars are tracked, calculated, and billed in separate accounts based on whether they are loaded, empty, refrigerated boxcars, heavy duty flat cars, RSSMs, or other Hazardous Material railcars. The company:

- Allows one day credit to load or unload a Carrier Car; except that no credits are available for Carrier Cars loaded with RSSM.

If CSXT cannot place or pull a railcar due to Customer's failure to facilitate CSXT's access to the railcar, the railcar continues to accrue debits.

At the end of each month, credited days and debited days are totaled for each Carrier Car Released at a particular Customer location:

- If total credit days exceed total debit days, no Demurrage accrues
- If total debit days exceed total credit days, Demurrage accrues
- Excess debit days, multiplied by the applicable rate, determine the Demurrage amount billed to the Customer
- Carrier Cars are tracked, calculated, and billed in separate accounts based on whether they are loaded, empty, inbound, or outbound; credits in one account cannot be used to offset debits in the other
- Excess Demurrage credits do not carry over to the next month

Debit days start at 00:01 the next scheduled service day after CSXT notifies the Customer of Constructive Placement of a railcar, or Actual Placement of a railcar.

Reloading and Demurrage (2.1.2)

There are times when a Customer may appropriate a railcar for reloading. When this happens, the Demurrage cycle stops on the unloading account (2 credit days) and begins on the loading account (1 credit day). This ensures that you will be credited with the proper amount of time to accomplish the task.

- Railcars that have been emptied and are to be reloaded at the same location must be "appropriated" in ShipCSX prior to reloading to receive all available Demurrage credits
- Assistance regarding reloading is available by calling 1-877-SHIPCSX (1-877-744-7279).

EXAMPLE

A Customer handles 35 loaded Carrier Cars during the month of July at one of its facilities. They earn 35 credits (1 credit per Carrier Car), and total 50 debit days.

$$\begin{array}{ccccccc} 50 & - & 35 & = & 15 & \times & \$208 & = & \$3,120 \\ \text{Debit} & & \text{Credit} & & \text{Excess} & & \text{Daily} & & \text{Monthly} \\ \text{Days} & & \text{Days} & & \text{Debit Days} & & \text{demurrage rate} & & \text{demurrage bill} \end{array}$$

Additional Charge for Excessive Detention of Carrier Cars (2.1.3)

CSXT may charge an additional charge of \$125 per car per day when a specific Carrier Car (identified by car initial and number) is not Released within 10 days. This charge is in addition to the basic demurrage charge established by Section 2.1.1.

PRIVATE CAR STORAGE (2.2)

Private Car Storage Charges (2.2.1)

Like Demurrage, CSXT calculates and bills for Private Car Storage on a monthly basis using a credit/debit system. The company:

- Allows one day credit for a loaded or empty Private Car; except that no credit days are available for Private Cars carrying RSSM.

Private Car Storage charges are calculated like Demurrage. At the end of each month, credit days and debit days are totaled for each Private Car located on CSXT tracks pending access to a particular Customer facility:

- If total storage credit days exceed total debit days, no charges accrue
- If total storage debit days exceed total credit days, Private Car Storage charges apply
- Excess debit days, multiplied by the applicable rate, determine the Private Car Storage amount billed to the Customer
- Excess storage credits do not carry over to the next month
- Empty and loaded private railcars are tracked and billed in separate accounts; credits in one account cannot be used to offset debits in the other

Debit days start at 00:01 the next scheduled service day after CSXT notifies the Customer of Constructive Placement of the Private railcar and stops when the customer orders the railcar for Actual Placement.

DEMURRAGE AND PRIVATE CAR STORAGE APPLY TO CARS HELD FOR OTHER PURPOSES (2.3)

Demurrage or Private Car Storage charges may also apply to railcars held due to other conditions caused by a Customer, including:

- Empty Railcars placed in industry and released empty
- Railcars tendered to a Consignee and ultimately refused by the Consignee
- Railcars held due to being overloaded
- Railcars held while awaiting any change to the Shipping Instructions
- Railcars held short of destination due to Customer's inability to accept delivery
- Railcars held for load transfers waiting for private empty equipment

These Demurrage and Private Car storage fees are calculated without credit days. The number of debit days is multiplied by the applicable rate to determine the amount payable to CSXT by the Customer.

Holding Heavy Duty Flat Car Detention Charges (2.3.1)

CSXT may charge up to \$500 per car per day when heavy duty flat cars are held short of destination due to Customer request or a Customer's inability to receive the car.

SECTION 2, CONT.

DEMURRAGE AND PRIVATE CAR STORAGE

OPEN GATE YARD DEMURRAGE (2.4)

Demurrage charges will also apply to railcars, subject to Open Gate delivery, that cannot be delivered due to the Customer's facility being full, Customer having more railcars arrive than the Customer's facility can accept, or due to any other Customer reason. The charge for Open Gate Yard Demurrage is \$75 per railcar per Day. Customers may verify which railcars are subject to Open Gate delivery in ShipCSX.

CSXT calculates and bills Open Gate Yard Demurrage on a weekly basis for activity for two weeks prior. Charges will only apply on scheduled service days. At the close of the billing cycle, the number of cars that were eligible for Open Gate Yard Demurrage are totaled as well as any credits created from Railroad misses that were reported during that week.

Credits are given to a customer when the Railroad reports an exception due to the fault of the Railroad. Each car reported as a Railroad failure will be given one credit. Credits accumulated for a specific day are not eligible to offset charges for the same day, they will roll to the next day. Credits will continue to carry forward until the available capacity equals the available cars in the yard for placement.

If the car count exceeds the credits, an Open Gate Yard Demurrage bill will be issued at the applicable rate.

DEMURRAGE and PRIVATE CAR STORAGE RATES (2.5)

DEMURRAGE CREDIT (FREE) DAYS	RATE PER DAY	REFRIGERATED CAR and HEAVY DUTY FLAT CAR RATE PER DAY
1-DAY CREDIT FOR LOADING	\$208 per railcar	\$350 per railcar
1-DAY CREDIT FOR UNLOADING	\$208 per railcar	\$350 per railcar
0-DAY CREDIT FOR OVERLOADS	\$208 per railcar	\$350 per railcar
0-DAY CREDIT FOR RAILCARS HELD FOR OTHER PURPOSES	\$208 per railcar	\$350 per railcar
PRIVATE CAR STORAGE CREDIT (FREE) DAYS	RATE PER DAY	
1-DAY CREDIT FOR EMPTY RAILCARS	\$115 per railcar	
1-DAY CREDIT FOR LOADED RAILCARS	\$115 per railcar	
0-DAY CREDIT FOR OVERLOADS	\$115 per railcar	
0-DAY CREDIT FOR RAILCARS HELD FOR OTHER PURPOSES	\$115 per railcar	
PRIVATE CAR STORAGE CREDIT (FREE) DAYS	HAZMAT CARS RATE PER DAY	RSSM CARS RATE PER DAY
0-DAY CREDIT FOR LOADED RAILCARS		\$2,000 per railcar
1-DAY CREDIT FOR LOADED RAILCARS	\$300 per railcar	
1-DAY CREDIT FOR EMPTY RAILCARS	\$115 per railcar	\$115 per railcar
DEMURRAGE CREDIT (FREE) DAYS	HAZMAT CARS RATE PER DAY	RSSM CARS RATE PER DAY
0-DAY CREDIT FOR LOADED RAILCARS		\$2,000 per railcar
1-DAY CREDIT FOR LOADED RAILCARS	\$300 per railcar	
1-DAY CREDIT FOR EMPTY RAILCARS	\$208 per railcar	\$208 per railcar
OPEN GATE YARD DEMURRAGE/PRIVATE CAR STORAGE	RATE PER DAY	
0-DAY CREDIT FOR RAILCARS	\$75 per railcar	

SECTION 3

NETWORK

The 20,000 miles of track that form the CSXT network connect with tracks owned and operated by other railroads, with Sidetracks (privately owned tracks that connect to Customer facilities), and Team Tracks (tracks we make available to multiple Customers on a limited basis). In order to ensure the utmost in efficiency and hassle-free transition between these different tracks, CSX observes the following policies and requirements.

SIDETRACKS (3.1)

Most Customer facilities are accessed via Sidetracks. At CSXT, we expect to operate with a private sidetrack agreement that establishes the responsibilities and processes necessary for our use of those tracks, including important issues related to local safety, and operations. In the absence of a private sidetrack agreement, CSXT assumes that you are inviting us onto your property when we provide you service, and the following terms and conditions govern the use of the Sidetracks. CSXT reserves the right, however, to decline service on a Sidetrack in the absence of a private sidetrack agreement if you deny the applicability of these terms to our use of that Sidetrack.

If you have any questions regarding the design and construction of new Sidetracks, please access our Industrial Development website at:

<http://www.csx.com/index.cfm/customers/industrial-development/>

Access Right (3.1.1)

When a Customer orders or accepts a Shipment from CSXT, they are representing that they own or have the right to grant CSXT access to the Sidetracks and property leading to and within the Customer facility. This allows CSXT to proceed unimpeded over the Sidetracks.

- CSXT will use the Sidetracks to deliver any railcar directed to the Customer's facility by a valid Shipping Instruction (CSXT is not liable for any costs or losses arising solely from the fact of such delivery)
- CSXT may access and temporarily occupy Customer's Sidetracks when useful in the course of providing local service in the Customer's vicinity
- In the event we deliver a railcar NOT ordered or expected by the Customer, we will use commercially reasonable efforts to promptly remove the railcar

Maintenance (3.1.2)

Customers must, at their own expense, inspect, maintain, and renew Sidetracks consistent with normal operations, and in accordance with:

- The Federal Railroad Administration's Track Safety Standards (49 C.F.R. Part 213)
- Railroad Worker Safety Regulations (49 C.F.R. Part 214)

The Customer must inform CSXT's local representatives of the dates and amount of time that the Sidetracks will be out of service, whether for maintenance or other reasons.

SECTION 3, CONT.

NETWORK

In addition, Customers must keep Sidetracks free from:

- Debris and weeds
- Potholes and excavations
- Ice and snow
- Temporary or permanent structures and poles
- Other obstructions (i.e., parked vehicles)

CSXT has the right, but not the duty, to inspect Sidetracks.

CSXT will not operate over any Sidetracks that we determine are unsafe.

Close Clearances (3.1.3)

A customer shall not maintain Close Clearances in the area of Sidetracks unless:

- The customer obtains a waiver from any conflicting Governmental Requirements, and
- CSXT approves such Close Clearance in writing

Customers must install, maintain and replace at their expense any warning signs or lighting, or make other adjustments regarding Close Clearances as may be necessary, useful, or required by any Governmental Requirements or CSXT.

Construction (3.1.4)

If a Customer seeks to construct new or additional, or alter existing, Sidetracks without interruption in CSXT service:

- All construction must be done in accordance with the provisions of CSXT's current Standard Guidelines and Specifications for the Design and Construction of Private Sidetracks, and
- Customers must supply CSXT with construction plans for any addition, deletion, or modification to the Sidetracks, and obtain CSXT's written confirmation that CSXT has no objections to the proposed changes prior to making any material alterations to the Sidetrack

To facilitate safe operations and avoid interruptions of service, Customers should notify CSXT not less than 30 days prior to constructing or allowing the construction of any new tracks, public or private road, gate, tunnel, bridge, culvert, pit, gas-line, pipe, or other items on, over, under or along any part of the Sidetrack or right-of-way

Emergency Access Right (3.1.5)

CSXT may use Sidetracks for emergency operating purposes as long as the emergency operations do not materially affect the use of the Sidetracks for rail service to the Customer.

Control over Railcars (3.1.6)

CSXT surrenders possession and control of each railcar, and its contents, consigned to or ordered by the Customer when:

- A railcar has been placed on a Sidetrack, and CSXT's locomotive uncouples from the railcar, or
- CSXT's crew departs from the locomotive if the locomotive is being left with the Customer

CSXT assumes possession and control of a railcar and its contents when:

- CSXT's locomotive is coupled to the railcar, or
- When the locomotive has been left with the Customer, CSXT's crew is onboard the locomotive and has actual control over the train by initiating departure from the Private Track

Customer indemnifies CSXT against any damages that result from failing to secure railcars in their possession.

Dispatch (3.1.7)

Dispatching traffic on portions of a Sidetrack used by CSXT to provide service to Customers must be coordinated by the field personnel of CSXT and the Customer.

Hazardous Materials (3.1.8)

Hazardous Materials shall not be placed by anyone:

- On or within the twenty-five feet of Sidetracks, or
- On Customer property within 100 feet of CSXT's connecting mainline track

This does NOT apply to:

- Shipments consigned to, or ordered by, a Customer accessible by such Sidetrack, or
- Existing pipelines for the transportation of Hazardous Materials

Continuation Charge (3.1.9)

If the CSXT traffic on a Sidetrack is insufficient to justify continuing access to the CSXT network, CSXT may offer to keep its access switch in place in exchange for an annual continuation charge.

- 0 Annual Carloads - \$25,000
- 1-12 Annual Carloads - \$16,000

TEAM TRACKS (3.2)

CSXT generally permits Customers limited access to Team Tracks for the purpose of loading and unloading railcars.

Rules of Access to Team Tracks (3.2.1)

Safety has no exceptions: every Customer and its employees, Agents and subcontractors must comply with applicable laws, regulations, safety rules, and CSXT requirements while using a CSXT Team Track facility. In addition:

- Customers may not store materials or equipment on CSXT's property
- Permission to access the Team Track terminates immediately upon completion of loading or unloading
- Customers shall comply with all CSXT rules and policies relating to the Team Track and the instructions of CSXT's authorized personnel
- Upon completion of loading or unloading of a railcar, Customers shall leave CSXT's property in a safe and clean condition, removing all materials they brought onto CSXT's property or removed from the railcar
- A Customer must immediately vacate CSXT property if so instructed by CSXT personnel

- Crossings of CSXT tracks by trucks or other equipment shall be made solely at public crossings unless prior alternate arrangements have been made with CSXT's Division Engineer

We will deny access to a Team Track if, in our discretion, we determine that the Customer's use of the Team Track is negatively affecting the safety of Team Track, other Customers, or our other operations.

Prohibited Materials (3.2.2)

Due to safety concerns, the following materials shall not be placed by anyone on Team Tracks or CSXT property while accessing Team Tracks:

- Hazardous Materials
- Bulk liquids of any kind

Liability at Team Tracks (3.2.3)

A Customer assumes all risks, and agrees to defend, indemnify, and save harmless CSXT and its employees from and against, all losses, costs, expenses, claims, suits, and judgments, including reasonable investigation and attorney's fees, suffered or incurred in connection with:

- Injury or death of ANY person(s), including but not limited to the agents, employees, and permittees of CSXT and Customer,
- Loss of or damage to ANY property, including but not limited to property owned or in the care, custody, or control of CSXT or Customer, and
- Environmental damage arising from the use by a Customer, its employees, agents or contractors, of a CSXT Team Track or any associated facilities, except to the extent such injury, death, loss or damage is caused by the sole negligence, or by the gross negligence or willful misconduct, of CSXT or its employees.
- The foregoing obligations on the part of the Customer apply regardless of the cause of such injury, death, loss, or damage, or of any joint or concurring ordinary negligence on the part of CSXT or its employees.

SECTION 3, CONT.

NETWORK

NO RIGHT TO ACCESS CSXT TRACK (3.3)

Protecting our network is essential to maintaining our employees' safety and CSXT's service operations. No one else, including a Customer, is allowed to enter, perform any switching, or otherwise operate on any tracks owned by CSXT. If a Customer accesses CSXT track, Customer assumes all risk of loss and indemnifies CSXT against all damage, cost, liability, judgment, and expense, including attorney's fees, in connection with any personal injury to or death of any persons or loss of/damage to any property, whether employees or property of either Customer, CSXT, or third persons, sustained, incurred, arising, or growing out of operations by Customer or its Agents upon CSXT tracks.

CONSTRUCTION NEAR TRACKS (3.4)

We have learned that a vast majority of commercial general liability insurance policies exclude any location within fifty (50) feet of a railroad track. As such, many of our customers and neighbors need to exercise caution when considering any construction activities in the vicinity of our track, or any railroad tracks. The exclusion arises because of the unusual risks of construction activity in the vicinity or railroad tracks.

Flagging and Protective Services (3.4.1)

CSXT has sole authority to determine the need for flagging required to protect its operations and property. In general, flagging protection will be required whenever anyone is, or are likely to be, working within fifty (50) feet of live track or other track clearances specified by CSXT, or over tracks.

Anyone performing construction within fifty (50) feet of CSXT's tracks shall reimburse CSXT directly for all costs of flagging that is required on account of construction. Anyone planning such construction activity shall give a minimum of 30 days' advance notice to CSXT Representative for anticipated need for flagging service. No work shall be undertaken until the flag person(s) is/are at the job site. If it is necessary for CSXT to advertise a flagging job for bid, it may take up to 90 days to obtain this service,

and CSXT shall not be liable for the cost of delays attributable to obtaining such service.

CSXT shall have the right to assign an individual to any construction site within fifty (50) feet of CSXT's tracks to perform inspection service whenever, in the opinion of CSXT, such inspection may be necessary. CSXT may charge, and any Customer shall pay, the costs incurred by CSXT for such inspection service. Inspection service shall not relieve anyone from liability for its own construction.

CSXT shall render invoices for, and Customers shall pay for, the actual pay rate of the flagpersons and inspectors used, plus standard additives. If the rate of pay that is to be used for inspector or flagging service is changed before the work is started or during the progress of the work, whether by law or agreement between CSXT and its employees, or if the tax rates on labor are changed, bills will be rendered by CSXT and paid by Customer using the new rates. Customers shall perform their operations that require flagging protection or inspection service in such a manner and sequence that the cost of such will be as economical as possible.

Insurance Offer (3.4.2)

At CSXT's option, Customers and others who own land in the vicinity of CSXT's rights of way, may pay CSXT, at CSXT's current rate at time of request, the cost of adding any surveying, construction or demolition activities, to CSXT's blanket Railroad Protective Liability (RPL) Policy for the period of actual surveying, construction or demolition activities. This coverage is offered at CSXT's discretion and may not be available under all circumstances.

SECTION 4

CUSTOMER SWITCHING

Once CSXT delivers a railcar, pursuant to a line-haul move, to a designated origin, destination, or any other agreed upon point for loading or unloading, any subsequent switching movements may be subject to switching charges. Customers can minimize or reduce their charges for additional switching by planning and loading railcars in a manner that minimizes the need for switching railcars. CSXT’s charges for additional switching are listed below.

CUSTOMER SWITCHING CHARGES (4.1)

Intra-Plant Switch	\$210 per railcar
Intra-District Switch	\$600 per railcar
Locomotive Switch	\$600 per locomotive
Extra or Special Switch	\$5,000 per occurrence per crew shift (in addition to the above charges)
Intra-Plant Switch RSSM (Rail Security-Sensitive Materials)	\$625 per railcar

- Rail Security-Sensitive Materials, as defined by 49 C.F.R. §1580.100(b), may not be tendered for Intra-District Switching, but can only move in line-haul service
- The foregoing charges cannot be used for Reciprocal Switching

SWITCHING ORDERS (4.2)

CSXT will accept Customer switching requests by any of the following electronic or phone methods:

- [ShipCSX.com](#)
- Electronic Data Interchange (EDI)
- ShipCSX Mobile

Requests for extra or special switching should be submitted to the CSXT Customer Solutions Department through our ShipCSX Problem Resolution tool.

CSXT reserves the right to decline to perform additional switching within a Customer’s facility.

SECTION 4, CONT.

CUSTOMER SWITCHING

ABSORPTION OF RECIPROCAL SWITCHING AND UNABSORBED RECIPROCAL SWITCH CHARGES (4.3)

CSXT pays the Reciprocal Switching charges assessed by other Carriers when they originate or terminate traffic at facilities not otherwise accessible by CSXT.

- Any portion of the Reciprocal Switching charge that is included in CSXT's line-haul rate is the 'absorbed' portion of the switch charge
- CSXT will absorb Reciprocal Switch charges, unless otherwise provided in a line-haul pricing document, contract, or in subsection 4.4 below
- The difference between the other Carrier's Reciprocal Switch charge and the amount absorbed by CSXT constitutes the Unabsorbed Reciprocal Switch Charge, which will be invoiced to a Customer separately

NON-ABSORPTION OF RECIPROCAL SWITCHING (4.4)

CSXT will not absorb a Reciprocal Switch when:

- CSXT serves both the origin and destination
- CSXT serves either the origin or destination, and the opposite end of the movement is on a short line that only connects, directly or indirectly to CSXT (other than the switch charge of the originating or terminating short line)
- The origin or destination station is on any of the following short line railroads:
 - South Central Florida Express
 - Georgia Central Railway (except for the Savannah, McRae, Helena, Rhine, East Dublin, Dublin and Macon, GA stations)
 - Georgia and Florida Railnet Inc. (except for the Camilla, Albany, Chapco, or Dosaga, GA stations)
 - ARTR - A&R Transport

SECTION 5

SPECIAL SERVICES

SPECIAL TRAIN SERVICE (5.1)

With a fleet that includes everything from boxcars and covered hoppers to flatcars, and more, CSXT can carry almost every type of raw material and finished product imaginable. We also provide specialized rail service for freight that may be challenging or impossible to move with other modes of transportation. This type of freight may include materials that are extraordinarily heavy, large, or feature a high center of gravity.

Requesting Special Train Service (5.1.1)

The planning required to transport specialized goods can be significant and it can take a fair amount of time to both develop the appropriate route and plan and obtain any necessary approvals. Customers needing special service must submit a Special Train Service Authorization Form to us in order to begin that process. Given the specialized nature of the requested service, and of what may be required to provide it, please give us as much notice and information as possible in making the request for special train service.

CSXT works hard to find a route for your specialized goods. If you decide not to tender a load for movement as a Special Train after submitting a Special Train Service Authorization Form, CSXT may bill you \$12,500 for that effort. If you cancel a Special Train less than forty eight (48) hours before your Special Train is scheduled to depart CSXT's origin yard, CSXT may bill you \$30,000 for the costs of arranging for your Special Train.

If a Special Train Service route extends beyond the CSXT network, it is the Customer's responsibility to contact and determine the requirements, limitations, and fees of the other Carrier(s), and to secure permission for access to the other Carrier's network.

If you believe your freight requires Special Train Service, please contact your CSXT Sales Manager or the CSXT Customer Solutions Department through our ShipCSX Problem Resolution tool.

For dimensional loads, you should start by submitting a Clearance Request at www.shipcsx.com > Resources > Clearance Bureau > Clearance Request. After Clearance File is established and clearance received, you may request Special Train via www.shipcsx.com > Resources > Clearance Bureau > Special Train/Switch Service. For further information, please contact CSXT Clearance Bureau at Clearance2SF@csx.com.

CSXT reserves the right to accept, reject, or condition all requests for special train service within its network.

Special Train Service Charges (5.1.2)

CSXT charges \$140 per mile, via the route of actual movement, subject to a minimum of \$30,000, for Special Train Service. The charge is in addition to, and billed separately from, the otherwise applicable line-haul charges.

- Mileage for moves of dimensional shipments that exceed CSXT's published clearance limitations shall be based on the actual miles moved along the route determined by the Clearance Bureau

SPECIAL SERVICES

INTERNATIONAL SHIPMENTS (5.2)

Rules for International Shipments (5.2.1)

The CSXT network stretches into Canada, serves 70 ports and offers service for freight bound to Mexico. Customers who plan to ship internationally must comply with all customs laws and obtain any and all approvals for the cross-border transportation of their shipments, including any and all clearances associated with their shipment under import and export laws. All necessary or useful documentation with respect to an international shipment must be provided to CSXT in a timely manner. CSXT fully cooperates with governmental authorities in handling international shipments, but does not provide the services of a licensed customs broker. U.S., Canadian, and Mexican border officials require complete import and export documentation associated with, and access to, all Shipments.

- Empty railcars cannot automatically reverse route across U.S.-Canada borders – they must have a separate Shipping Instruction
- Residual amounts of commodities in railcars may require a customs broker to assist in their transit across the border
- Railcars with residual Hazardous Materials, including chemical tank cars, cannot be identified as empty on the Shipping Instruction

Customs and Fees at International Borders (5.2.2)

Proper paperwork is vital to efficient international transportation. If CSXT or another Carrier is forced to set out a railcar from a trans-border train, or to place a railcar on hold status due to incomplete or incorrect Customs documentation, data quality, or at the request of U.S., Canadian or Mexican Customs for any reason, the Customer is responsible for and will be charged for all associated switching charges and any other costs or fees paid by CSXT.

Fees Relating to Canadian Customs Holds (5.2.3)

When CSXT is obliged to hold a railcar awaiting Canadian Customs clearance and release, CSXT will assess an additional \$2,000 (U.S.) per railcar hold fee.

Fees For U.S. Customs and Border Protection (5.2.4)

- When CSXT sets out a railcar from a trans-border train at the request of U.S. Customs and Border Protection for any reason (including compliance, enforcement or random inspection), CSXT will assess an additional \$550 (U.S.) per railcar switch charge
- CSXT may charge a fee of \$200 (U.S.) per railcar when a Customer submits incomplete or erroneous Customs documentation or data
- When CSXT holds a railcar due to incomplete or erroneous Customs documentation or data quality, a fee of \$550 (U.S.) per railcar applies

Border Fees (5.2.5)

In addition to established line-haul rates and accessorial charges, transborder shipments are also subject to various additional shipping charges.

When CSXT is the transborder carrier of record for shipments entering the U.S. from Canada:

- The U.S. Department of Agriculture's Animal & Plant Health Inspection Services (APHIS) collects a fee on each railcar crossing the border
- The U.S. Department of Homeland Security's Customs & Border Protection Services collects a fee on each railcar crossing the border

CSXT pays the combined fee when it is the transborder carrier of record. CSXT, in turn, charges the shipper of record fees for each loaded railcar entering the U.S. from Canada. The fees appear on the freight bill with the railcar(s) affected.

Additionally, when CSXT is the transborder carrier of record for shipments crossing the U.S. – Canada border:

- CSXT charges a \$25 (U.S.) on each railcar for customs paperwork and processing (The \$25 (U.S.) will also appear on the freight bill.)

Payments In Canada (5.2.6)

If a service associated with accessorial services, including switching but excluding Special Train Service, is performed at a station in Canada, it is billed at the Canadian rate in Section 5.2.7. This also includes unabsorbed amounts of foreign line reciprocal switching charges published in these Terms and Conditions.

Charges for special train service will be billed in the same currency as the line-haul freight charges.

Customer Switching Charges in Canada (5.2.7)

Intra-Plant Switch	\$210 per railcar
Intra-District Switch	\$600 per railcar

Note – from and after July 1, 2017, these rates are set in US dollars, and adjusted for the exchange rate and Canadian taxes prior to billing.

Mexican Customs Requirements (Carta Porte) (5.2.8)

Carta Porte

To ensure compliance with updated Mexican customs regulations published in Servicio de Administración Tributaria (SAT) Carta Porte requirements, CSX—along with all rail carriers—will begin implementing edits for Carta Porte version 3.0 effective April 1, 2024.

Per the regulations, the following data must be provided for each commodity within a shipment:

- UNSPSC Commodity Code and Description
- Piece Count and Package Type
- Weight and Weight Type
- Mexico Material Type Code (MMT)
- Mexico Importer Name
- Mexico Importer Federal Tax ID Number

Additional required fields when applicable:

- Mexico Hazmat Code (UN/NA Number)
- Country of Origin or Destination (if the commodity moves outside North America)

System edits will verify the presence of these values and validate the MMT code against official tables published by the Mexican government.

[Click here](#) to view an updated industry EDI supplement for Carta Porte, including examples of the new requirements.

For questions related to EDI, please contact B2B@csx.com. For process-related inquiries, contact the CSX Customer Solutions Team:

- Carload Users: 1-877-744-7279 (Option 2 → 1 → 5)
- Intermodal Users: 1-877-744-7279 (Option 2 → 2 → 2)

SECTION 5, CONT.

SPECIAL SERVICES

TURNING CARS (5.3)

Loading a railcar in a manner that requires unloading from a single side can be unsafe, and is prohibited unless permitted by applicable AAR rules.

If a railcar must be turned, the turning car charge is: \$1,000 per railcar

Requests for turning a car should be submitted to CSXT through the ShipCSX Problem Resolution tool. CSXT reserves the right to decline to perform the turning of a car.

WEIGHING (5.4)

Freight weights are required when used to determine freight charges. CSXT will provide weighing services when acceptable freight weights are not provided by the Customer. When CSXT does not need a weight to determine freight charges and a Customer nevertheless requests that a railcar be weighed, fees are based on where the weighing takes place, as follows:

- Private scales at the facilities of the party requesting the weighing: \$200/railcar
- Railroad or other scales not at the facilities of the party requesting the weighing: \$500/railcar

Customers may be charged switch charges or line-haul transportation charges for railcars moved to and from scales in addition to the weighing charges.

Once weighed, the gross, tare, and net weights used for billing purposes will be provided to parties named on the Shipping Instructions.

Certifying Customer Scales (5.4.1)

All scales used for weighing railcars must conform to the requirements of the AAR Scale Handbook and CSXT practices and procedures.

Accepting Customer Weights (5.4.2)

A Customer railcar weight will be accepted when the weight meets the requirements of this Section 5.4 and is included on the Shipping Instruction or transmitted to CSXT on a weight certificate. CSXT will also accept weights pursuant to a separate agreement. All weights are subject to verification by the participating Carriers. Customer must furnish the weight to CSXT Customer Billing:

- EDI
- by fax to 1-800-448-8984
- by email to 8004488984@fax.csx.com

Weight Overloads (5.4.3)

Maximum weights and the procedures for handling overloaded railcars are established in CSXT's Open Top and Closed Car Policy, available at CSX.com. A railcar is overloaded if it exceeds the railcar's limit or that of any line segment along the route between origin and destination. If a railcar is overloaded, to the extent practicable, the Consignor may be notified and given an opportunity to take corrective action.

- CSXT may apply a charge of \$1,150 for each overloaded railcar and may move to destination without being reduced and/or switched; additional handling fees may also apply
- Overloaded railcars shall be subject to demurrage charges until corrective action is completed

- If an additional railcar is needed to transport part of the overload, the rate for transporting that extra railcar will be determined as if it were traveling the originally billed route under the same commodity-specific public price or private contract price as the originally overloaded railcar
- Overload charge is inclusive of the movement to classify the car for departure of the yard

*Cars stopped and reduced due to an overload are subject to safe loading charges in section 1.3.3.

UNIT TRAINS (5.5)

CSXT uses a reservation process, the Unit Train Management System, to match consignee demand, consignor supply and CSXT capacity to achieve efficient and reliable Unit Train operations. The reservation system must be used by all parties for each step in the reservation process, from the initial reservation request through the release and rerouting to an origin of the empty Railcars after unloading. The Unit Train Management System instructions on how to use it are located at www.shipcsx.com.

Service Limitations (5.5.1)

The Unit Train Management System:

- Does NOT establish binding commitments on any of the parties to a reservation except as specifically stated in ShipCSX.
- Does NOT constitute a tender or an offer of a particular contract for transportation.

Monthly Pro Rata Scheduling (5.5.2)

Customers desiring Unit Train transportation service must provide proposed monthly loading schedules to CSXT through ShipCSX. These monthly loading schedules must include all volume, timing, and loading information requested by the Unit Train Management System. Customers must endeavor to include in each proposed monthly loading schedule a pro rata portion of the shipments Customer expects to tender during any given annual or other applicable period.

Change Requests (5.5.3)

Customers may submit a reservation change request until 1400 hours (EST) on the day two calendar days prior to the projected load date. The charge for any manual processing of a timely change request is \$50. Any customer initiating a reservation change after that time for reasons other than force majeure may be charged a rescheduling charge of \$3,250 per incident.

Holding of Trains (5.5.4)

When Unit Trains are held other than for CSXT's convenience, we may assess the responsible customer a minimum of \$11,250 per Unit Train carrying non-hazardous cargo per day or \$25,000 per Unit Train carrying any commodity of regulated, hazardous commodities per day.

Recrewing (5.5.5)

When customer actions result in CSXT having to recrew a Unit Train, CSXT may charge the customer a recrew charge of \$3,000.

Power (5.5.6)

When customer actions result in CSXT locomotives exceeding 24 hours at origin or destination, CSXT may charge the customer at the current rate of \$100 per hour per locomotive until the train is released to CSX to pull.

CLEARANCE FOR NEW TIH MOVEMENTS (5.6)

CSXT'S Positive Train Control Footprint (5.6.1)

1. CSXT will spend in excess of \$2 billion dollars to implement positive train control as required by law and the regulations of the Federal Railroad Administration ("FRA") contained in 49 C.F.R. Part 236, Subpart I, as amended, supplemented or superseded, (the "PTC Regulations"). CSXT is on track to complete installation as required by law.

2. To maintain its compliance with the PTC Regulations, CSXT will require review of all new origins or destinations for shipments of railcars containing any of the following: (a) a material poisonous by inhalation as defined in 49 CFR 171.8, including anhydrous ammonia, (b) Division 2.3 gases poisonous by inhalation as set forth in 49 CFR 173.115(c), (c) and Division 6.1 liquids meeting the defining criteria in 49 CFR 173.132(a)(1)(iii) and assigned to hazard zone A or hazard zone B in accordance with 49 CFR 173.133(a) (together, "TIH Hazards").

Any (i) origin that has Tendered a TIH Hazard, (ii) destination that has received a TIH Hazard, or (iii) any interchange that has interchanged (or otherwise transited) a TIH Hazard within the last twenty four (24) months shall be considered an "Active TIH Facility." Any (i) origin that has not Tendered a TIH Hazard, (ii) destination that has not received a TIH Hazard, or (iii) any interchange that has not interchanged (or otherwise transited) a TIH Hazard within the last twenty four (24) months, that a Customer proposes to have Tender, receive, interchange, or transit a TIH Hazard shall be considered a "New TIH Facility." A pairing of two Active TIH Facilities between which a TIH Hazard has been shipped within the last twenty four (24) months shall be considered an "Active TIH Pair". Any shipments of a TIH Hazard that is not between an Active TIH Pair is a "New TIH Service."

3. No prior CSXT review and approval is required for a Customer to Tender a TIH Hazard if it is routed between an Active TIH Pair.

4. CSXT reserves the right to suspend movement for review of any New TIH Service, until the new service is approved pursuant to Section 5.6.2 below.

5. If a TIH Hazard's route includes services by a carrier other than CSXT, it is the Customer's responsibility to contact and determine any requirements, limitations, and fees of the other Carrier(s), and to secure permission for access to the other Carrier's network.

New Origin-Destination Pairs (5.6.2)

Customers wishing to Tender a TIH Hazard from an origin or to a destination such that it would constitute a New TIH Service, may either:

1. Enter into a contract with CSXT for the transportation of the TIH Hazards under conditions to be negotiated. To initiate contract negotiations, the customer must follow the procedure set out in Section 5.6.3 below.

2. Submit a request for a common carrier rate quotation pursuant to the procedure set out in Section 5.6.3 below. Common carrier rates may include volume, liquidated damage, and/or surcharge provisions.

If you believe your TIH Hazard shipment may constitute a New TIH Service, please contact your CSXT Sales Manager or the CSXT Customer Solutions Department through our ShipCSX Problem Resolution tool.

Requests for New TIH Service (5.6.3)

1. The planning required to transport TIH Hazards can be significant and, even if a shipment can be accommodated, it can take a fair amount of time to develop the appropriate route and plan. Customers needing to Tender or receive a TIH Hazard over a New TIH Service must submit a New TIH Service Request in order to begin that process. *Given the specialized nature of the requested service, and of what may be required to provide it, please give us as much notice and information as possible in making the request for service to or from a New TIH Facility.*

The New TIH Service Request requires the following information:

- i. Name and address of Customer
- ii. Name and STCC Code of each TIH Hazard for which it seeks transportation
- iii. The Origins and Destinations for the TIH Hazards being transported
- iv. Any other information that may be necessary or useful for CSXT in assessing the request, such as car type and capacity; expected volumes by month or year; single car, multi-car or Unit Train shipments.
- v. Applications must be submitted to: Market Manager, Chlor-Alkali and TIH Chemicals,
CSX Transportation, Inc.,
500 Water Street, J875, Jacksonville, FL 32202

Upon receipt of a complete request, CSXT will conduct a review of the relevant track segments to determine whether the service can be provided over a route that complies with the PTC Regulations.

2. If the entire route of movement on CSXT is equipped with PTC at the time of the request, CSXT will notify the Customer, and the Customer may either negotiate a contract for transportation or request a common carrier rate.

3. If the entire route of movement on CSXT is not equipped with PTC at the time of the request, and the Customer is interested in discussing contractual arrangements that could include equipping the unequipped portions of the route of movement, CSXT will conduct an initial assessment of the cost that would be required to make the involved subdivisions (or portions thereof) PTC equipped. A preliminary engineering review charge of \$2,500 in US Funds, payable in advance must be submitted at the time the customer requests a common carrier rate for service that constitutes a New TIH Service. If a contractual arrangement can be made, CSXT will apply a credit equal to the review charge against the first shipments consigned along any such new route. Upon completion of the review, CSXT will submit a proposal to the requesting Customer for the sharing of costs necessary to make the affected subdivisions (or portions thereof) PTC Equipped.

4. If the entire route of movement on CSXT is not equipped with PTC at the time of the request, and the Customer requests a common carrier rate, CSXT will conduct an initial assessment of the cost that would be required to make the involved subdivisions (or portions thereof) PTC equipped. A preliminary engineering review charge of \$2,500 in US Funds, payable in advance must be submitted at the time the customer requests a common carrier rate that constitutes a New TIH Service. Upon completion of the review, CSXT will provide a common carrier rate which may include volume, liquidated damages, and surcharge provisions addressing the costs of PTC expansion.

PTC Footprint Changes (5.6.4)

Notwithstanding any provision of these Terms and Conditions, CSXT may cease to maintain PTC equipment on any segment of its network in accordance with the law and the FRA Regulations.

Improper Tender of TIH Hazards (5.6.5)

Should a Customer tender a bill of lading or Shipping Instruction that purports to order a New TIH Service without filing a New TIH Service Request, CSXT will return the TIH Hazard to the Customer (or interchanging carrier) at the Origin (or interchange) and reserves the right to assess a charge of \$5,000 for such improper tender.

SECTION 6

PAYMENT

CREDIT TERM, PAYMENT OF CHARGES AND FINANCE CHARGES (6.1)

Payment of Charges – Non-Credit Customers (6.1.1)

Customers who have not applied for and received credit approval with CSXT, or who have had their credit suspended by CSXT, must pay line-haul freight charges and other applicable fees IN FULL:

- Prior to CSXT's acceptance of a Shipment at origin if tendered 'prepaid' or
- Prior to placement of a Shipment at destination if tendered 'collect'

CSXT may transport or tender Shipments for non-credit Customers prior to receipt of payment of charges as otherwise specified here. In those instances, all charges are due upon receipt of the associated bill or invoice. Customers that fail to pay by the date specified will be assessed late fees and finance charges.

Establishment of Credit and Credit Agreement (6.1.2)

CSXT offers credit agreements to qualifying Customers. To apply, or to make arrangements for the electronic transfer and payment of charges, please complete a Credit Application and Agreement found at <https://www.csx.com/index.cfm/customers/new-to-csx-or-rail/become-a-customer/credit-application/> or call 1-904-366-3807. Applications may be requested in writing by contacting:

Credit Administration
CSX Transportation, Inc. – J-735
500 Water Street
Jacksonville, FL 32202

CSXT reserves the right, in its sole discretion, to establish or not establish credit for any Customer.

Cancellation of Credit (6.1.3)

CSXT reserves the right, in its sole discretion, to maintain or cancel credit for any Customer.

Credit Term (6.1.4)

Payment in full of all line-haul freight charges, switching charges and accessorial charges must be received by CSXT from Customers within 15 days of the date of the applicable CSXT bill.

No Set Off of Charges (6.1.5)

Customers may not set off or otherwise withhold payment of any CSXT charge due to any alleged overcharge, freight damage or other dispute with CSXT.

Finance Charges (6.1.6)

CSXT may assess a finance charge of 12% per year (0.0329% per day) on charges that are not received by CSXT when due. The finance charge:

- WILL NOT apply against disputed charges that are found by CSXT to have been billed incorrectly. Finance charges will, however, be assessed if a corrected invoice is not paid within terms from the date of that corrected invoice
- WILL be assessed on the unpaid balance of any charge from the first day following the due date through the date of receipt of payment in full
- May be billed monthly for all line-haul, supplemental, and miscellaneous bills that were past due during the previous month.

Late Payments (6.1.7)

Late payments are subject to a 10% fee on the outstanding balance of any charge that is not received by CSXT when due. The late fee:

- Is assessed in addition to the finance charge outlined above
- Will not apply against any disputed charge found by CSXT to have been incorrectly billed

Usury Law Compliance (6.1.8)

CSXT's policies on finance charges and late payment fees are designed to comply with usury laws. If either charge, or the combination of finance charge and late fees, exceeds allowable limits, then the applicable rate(s) will be automatically reduced to the maximum allowed.

Collection Costs (6.1.9)

Customers are expected to pay all of the fees, charges and costs billed to them. All expenses incurred by CSXT to collect money owed shall be paid by the Customer. In the event that suit must be filed to collect any money owed, the non-prevailing party shall pay the attorney's fees, costs and expenses incurred by the prevailing party. This section shall be governed and construed in accordance with Florida law.

PROCEDURES FOR DISPUTING INVOICES (6.2)

CSXT is committed to resolving disputed invoices fairly and efficiently. A Customer who wishes to dispute a charge must submit their dispute electronically via ShipCSX. In order to be reviewed, a dispute should be submitted within 30 days from the invoice date, and must be:

- Clearly and fully described
- Specific in identifying the reasons for the claim
- Complete in the supporting documentation provided

Once filed, a CSXT Customer Account Associate will investigate and report the company's acceptance or denial of the claim in writing. Customers must pay all undisputed portions of the bill as stated.

OVERCHARGE CLAIMS (6.3)

Claims for overpayment of charges must be submitted electronically via ShipCSX and received by Carrier no later than one year after delivery or tender of delivery of shipment. Log in to ShipCSX, locate the "Resources" pull down menu, and select "Claims Management." For help with ShipCSX, call 1-877-ShipCSX (1-877-744-7279). Any claim under twenty dollars (\$20) per Shipment Instruction is waived by Customer.

CASH APPLICATION (6.4)

Customers are required to specify the invoice being paid when tendering payment to CSXT. If a Customer tenders payment without identifying an accompanying invoice for the application of payment, CSXT will take the following steps:

- Review the Customer's outstanding invoices to determine if there is an invoice with an amount due equal to the payment amount. If such an invoice is identified, the payment will be applied to that invoice.
- If no such invoice is identified, CSXT will contact the Customer once by phone and/or email to obtain the Customer's preferred invoice(s) for application of payment.

If a Customer does not respond to CSXT's request for clarification within ten (10) business days, the payment will be applied in the order specified below. Payments applied according to this policy will not be reversed or reallocated.

1. Undisputed, past due line-haul invoices, from oldest to most recent
2. Undisputed, past due supplemental invoices or other miscellaneous charges, from oldest to most recent
3. Undisputed, outstanding late fees and finance charges, from oldest to most recent
4. Undisputed, outstanding line-haul invoices, from oldest to most recent
5. Undisputed, outstanding supplemental invoices or other miscellaneous charges, from oldest to most recent

SECTION 7

CLAIMS FOR DAMAGE TO, OR DELAY OR LOSS OF, FREIGHT

CSXT is committed to serving our Customers with safe, reliable rail transportation. In the event that freight is damaged or misplaced, we will promptly address your concerns as described below.

Report any loss or damage through ShipCSX.

Freight claims for loss or delay of, or damage to, cargo should be reported through ShipCSX Freight Claims tool. Log in to ShipCSX, locate the “Resources” pull down menu, and select “Claims Management.” For help with ShipCSX, call 1-877-ShipCSX (1-877-744-7279).

CARMACK AMENDMENT PROTECTIONS (7.1)

General Carmack Protections (7.1.1)

CSXT offers Carmack Amendment protection tailored to the commodity and route over which a Customer is asking CSXT to transport its freight. If desired, please contact your CSXT sales representative to receive a specific rate quote with Carmack Amendment protections. If Carmack Amendment protection is desired for a shipment that extends beyond the CSXT network, it is the Customer’s responsibility to contact and determine the requirements, limitations, and fees of the other Carrier(s), and to obtain Carmack Amendment protection from the other Carrier(s).

Declared Value Protections (7.1.2)

Any Customer that wants CSXT to assume liability for damages up to a declared value of the goods being shipped without requesting a tailored rate quote pursuant to subsection 7.1.1, must send an email to CarmackRequest@csx.com, before tendering the goods to CSXT, that includes:

- A statement declaring the election of Carmack Amendment protection and the value of the shipment, and
- Acknowledgement that the Carmack Premium, as defined below, will be added to their invoices, or billed to them separately, in accordance with Railway Accounting Rule 11

The Customer must also provide railcar and waybill numbers for each affected railcar to CSXT as soon as reasonably possible at CarmackRequest@csx.com.

The “Carmack Premium” portion of the line-haul rate is equal to 10% of the declared value of the goods and added to the common carrier line-haul price.

Limitation and Waiver (7.1.3)

CSXT’s liability for loss of, or damage to, goods in transit under this subsection 7.1 cannot exceed, and is limited to, the lesser of value of the goods, or the declared value, if applicable. Carmack Amendment protection is waived, and the provisions of subsection 7.2 shall apply, in the absence of an election by the Customer under subsections 7.1.1 or 7.1.2 above.

SECTION 7, CONT.

CLAIMS FOR DAMAGE TO, OR DELAY OR LOSS OF, FREIGHT

ALTERNATIVE APPROACH TO DAMAGE, DELAY, AND LOSS CLAIMS (7.2)

If you do not elect Carmack Amendment protections, CSXT will assume liability for freight claims subject to the following limitations:

- The minimum claim for loss or damage to freight is \$250
- Our liability for a shortage of goods shall be conditioned upon evidence of unauthorized entry into the railcar while it is in the possession of CSXT
- CSXT's maximum liability for loss or delay of, or damage to, the freight is one hundred thousand dollars (\$100,000) per railcar
- CSXT shall not be responsible for loss of or damage to the freight of shipments originating or terminating outside the United States when the location at which the damage occurred is not known
- Individual pricing documents may contain different limits which take precedence over the terms in this subsection 7.2

Subject to the limitations in this subsection 7.2, and the remaining provisions of Section 7, claims for loss, damage or delay to any commodity transported by CSXT is governed in all other respects by the provisions of the Carmack Amendment and Title 49 of the Code of Federal Regulations Part 1005 and the laws of the State of Florida (other than provisions addressing conflicts of laws).

TIME LIMITS FOR FILING CLAIMS AND LAWSUITS (7.3)

CSXT liability for loss, delay, and damage is contingent upon CSXT, or the railroad delivering interline Shipments, receiving immediate notification of all noted visible losses or damages discovered during the unloading of a railcar.

- Loss or damage discovered other than between 8:00 a.m. and 5:00 p.m., Monday-Friday shall be reported no later than 24 hours following unloading from the railcar
- Saturdays, Sundays and Holidays are excluded
- Loss & Damage reporting can be completed via ShipCSX in just a few steps log into www.shipcsx.com
- Concealed damage must be reported immediately upon discovery and made available for inspection at point of delivery
- Any claim for loss or damage must be filed within nine months of the date the shipment was delivered, or in the case of failure to make delivery, then within nine months after a reasonable time for delivery
- Any lawsuit or other action for the enforcement or liability for loss of damage must be instituted within two years and one day after CSXT first declines the claim
- Any claim or lawsuit not filed within the periods set forth in the preceding sentences is waived by the Customer

MITIGATION OF DAMAGES; SET OFF (7.4)

When CSXT contacts a Customer regarding damage during a derailment, the Customer must respond within 48 hours of such CSXT contact with any specific disposal or salvage instructions. If, after 48 hours, no response has been received, Customer shall be deemed to have waived any claim for damages from CSXT's failure to follow any special instructions, and CSXT shall be deemed to have authorization to move the product.

CSXT reserves the right to set off any amounts owed to a Customer due to a claim for loss or damage to freight against any and all amounts that Customer owes to CSXT.

RIGHT TO SELL ABANDONED, REFUSED, OR UNCLAIMED PROPERTY (7.5)

Freight that is:

- Abandoned by the Consignor and Consignee
- Refused by the Consignor and the Consignee
- Unclaimed within 15 days after notice is issued to the Consignor and Consignee

...may be sold by CSXT in accordance with applicable law. The proceeds of any sale will be applied to the payment of all transportation and other lawful charges and expenses incurred by CSXT and any balance will be paid to the owner of the freight sold by CSXT.

CARGO SEALS (7.6)

CSXT does not furnish, apply, verify, or inspect cargo seals.

- When seals are applied, all doors, hatches, valves and other openings on the railcar must be sealed
- Consignor must include each seal number and the name of the employee applying the seal(s) in its Shipping Instructions
- CSXT will not honor claims for loss, damage, or contamination of railcar contents based solely on the absence of one or more seals at the time of delivery at destination
- Claims for loss or damage are honored only when there is clear and convincing evidence of actual loss, damage, or contamination other than the mere absence of one or more seals, or apparent compromise of a seal that was applied before movement

CSXT reserves the right to audit, at CSXT's expense, the Consignor's on-site seal records.

GENERAL DEFENSES (7.7)

Improper Loading (7.7.1)

A Customer's failure to comply with requirements of the Uniform Freight Classification and AAR loading provisions constitutes a complete defense to any claim for damage. In addition:

Bill of Lading and other Traditional Defenses (7.7.2)

CSXT shall not be liable for any loss, damage or delay caused by:

- An act of God
- The public enemy
- The authority of law
- The act or default of the shipper or owner
- Natural shrinkage of product
- Riots or strikes
- A defect or vice in the property, or
- Country damage to cotton

CSXT's liability shall be that of a warehouseman for loss, damage, or delay occurring:

- After Actual or Constructive Placement of the property at destination, or
- After any other tender of delivery of the property to the party entitled to receive it

Except in the case of a breach by CSXT of the Contract of Carriage, CSXT shall not be liable for loss, damage or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner or party entitled to make such request.

SECTION 7, CONT.

CLAIMS FOR DAMAGE TO, OR DELAY OR LOSS OF, FREIGHT

CSXT's liability shall be that of a warehouseman for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by these Terms and Conditions after notice of the arrival of the property at destination or at the port of export has been sent and given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made.

SPECIAL AND CONSEQUENTIAL DAMAGES (7.8)

To the maximum extent permitted by applicable law, CSXT is not liable for special or consequential damages, including market decline claims, products deterioration, or other such claims based on delay in transportation, punitive damages or attorney fees.

ADDITIONAL LIMITATIONS FOR SHIPMENTS THROUGH MEXICO (7.9)

For any Shipment with either a rail origin or rail destination in Mexico which moves over CSXT:

1. CSXT is not responsible for any loss of or damage to the cargo occurring in Mexico.
2. CSXT is not responsible for unlocated loss of or damage to the lading unless the claimant can show by preponderance of the evidence that the loss of or damage to the lading occurred in the United States and is otherwise compensable under this Section 7.
3. All claims for loss of or damage to lading occurring in Mexico must be presented to the Mexican rail carrier. Filing of a claim with the Mexican rail carrier does not constitute filing of a claim with CSXT.
4. CSXT is not responsible for any expenses or losses incurred by a Customer from delays and problems in clearing Customs.

SPECIAL LIMITATIONS FOR SHIPMENTS OF VEHICLES (7.10)

Any loose items or uninstalled vehicle components in any vehicle transported by CSXT are tendered to CSXT at the sole risk of loss of shipper.

Only one claim may be filed for any single new finished vehicle.

SECTION 8

RAIL-TO-RAIL BILLING

CSXT works closely with other Class I and shortline railroads to promote the timely, efficient and error-free transfer of railcars and billing for our Customers' interline shipments. If you have any questions about the following policies and rates regarding rail-to-rail services, please contact your CSXT account representative.

INTERMEDIATE SWITCHING SERVICES (8.1)

Intermediate switching refers to the movement within a station by one Carrier of railcars between a second Carrier's and a third Carrier's tracks, when carriers two and three do not directly connect. Generally, CSXT charges other Carriers a fee of \$300 per railcar or per platform for intermediate switching movements in regular train operations, and the following rates if an intermediate switching movement cannot be handled in regular train operations:

- With a special train operation, for the first five railcars in the same movement: \$3,900 per movement and
- For each additional railcar in excess of five in the same movement: \$400

The rate for intermediate switching of locomotives moving on their own wheels is \$600 per engine in each direction.

RECIPROCAL SWITCHING SERVICES (8.2)

Application of Reciprocal Switching Charges (8.2.1)

CSXT provides, subject to the exceptions in Section 8.2.2, Reciprocal Switching for the specific Customers, with the identified interchange partners, and for the charges listed in Publication CSXT 8101.

- Charges for CSXT Reciprocal Switching are the responsibility of the line-haul carrier handling the loaded railcar from or to the station at which the reciprocal switch occurs
- Any charges assessed by an intermediate railroad providing an intermediate switch will be added to the reciprocal switch charges assessed by CSXT

Reciprocal Switching Exceptions (8.2.2)

CSXT does not provide Reciprocal Switching Services for:

- Special train shipments, or dimensional loads. See Section 5.1
- Traffic handled on automax, bi-level, or tri-level railcars
- Railway equipment, empty, moving on own wheels, including:
 - Railcars (STCC 37-422) not in revenue service
 - Locomotives or Tenders (STCC 37-411)
 - Maintenance or Repair Cars (STCC 37-424)
 - Passenger Train Cars (STCC 37-421)
 - Street Cars or self-propelled railroad cars (STCC 37-423)
- Traffic to or from Team Tracks or Lease Tracks
- Unit trains, except as specifically referenced in Publication CSXT 8101

SECTION 8, CONT.

RAIL-TO-RAIL BILLING

Restricted Reciprocal Switching (8.2.3)

When Reciprocal Switching for a given Customer facility is noted as restricted in Publication CSXT 8101, CSXT may require the line-haul carrier to provide sufficient documentation to verify that the shipment is eligible for reciprocal switching before we accept the railcar.

- CSXT may audit the line-haul carrier's records to confirm that all cars switched into that Customer's facility were eligible for reciprocal switching
- Railcars delivered for reciprocal switching in violation of a restriction shall be subject to CSXT line-haul charges for the railcar's movement

INTERCHANGE ERROR MOVEMENTS (8.3)

In the event CSXT receives cars in error or without necessary forwarding instructions, the AAR's Car Service Rule #7 applies.

If railcars are returned, forwarded or require holding, CSXT may assess the corresponding charge listed in Appendix 9.3 against the Carrier that misdelivered the railcar to us. CSXT may also apply a charge of three dollars (\$3) per mile traveled when CSXT has transported such railcar away from the interchange location, with a hundred (100) mile minimum.

RAILROAD SCAC CODES (8.4)

Railroad reporting marks can be found at: www.railserve.com/aar_railroad_reporting_marks.html

INTERCHANGE OF INTERMODAL RAILCARS WITH CONTAINERS BOUND FOR MULTIPLE TERMINALS (8.5)

When CSXT receives a railcar loaded with containers destined for two or more different intermodal terminals, CSXT will charge the rail carrier delivering the railcars to CSXT the lift fees established by CSXT's Intermodal Directory No. 1 for all lifts required to ensure that each railcar has containers destined to a single intermodal terminal.

SECTION 9

APPENDICES

RECIPROCAL SWITCHING IN CANADA (9.1)

The rules for interswitching in Canada, including the rates for interswitching, are available at Transport Canada's website at <https://laws-lois.justice.gc.ca/eng/regulations/SOR-88-41/> and https://otc-cta.gc.ca/eng/decisions?f%5B0%5D=field_mode%3A1347.

INTERCHANGE ERROR MOVEMENTS (9.2)

AA	\$450.00	Per Car	CRL	\$350.00	Per Car
AB	\$165.00	Per Car	CSO	\$565.00	Per Car
ABS	\$1,000.00	Per Car	CSS	\$350.00	Per Car
ACWR	\$300.00	Per Car	CTN	\$500.00	Per Car
AF	\$350.00	Per Car	CUOH	\$565.00	Per Car
AGR	\$565.00	Per Car	CWRO	\$150.00	Per Car
ALAB	\$350.00	Per Car	CWRY	\$565.00	Per Car
ALS	\$108.00	Per Car	DC	\$390.00	Per Car
AN	\$500.00	Per Car	DLWR	\$460.00	Per Car
AO	\$150.00	Per Car	EARY	\$565.00	Per Car
AOR	\$565.00	Per Car	EFRR	\$475.00	Per Car
AR	\$300.00	Per Car	EIRC	\$200.00	Per Car
ATN	\$450.00	Per Car	EJE	\$450.00	Per Car
ATW	\$565.00	Per Car	EJR	\$150.00	Per Car
BAYL	\$565.00	Per Car	ESPN	\$285.00	Per Car
BHRR	\$450.00	Per Car	ETRY	\$565.00	Per Car
BNSF	\$435.00	Per Car	EVT	\$250.00	Per Car
BPRR	\$565.00	Per Car	EVWR	\$200.00	Per Car
BRC	\$230.00	Per Car	FCEN	\$200.00	Per Car
BS	\$368.00	Per Car	FCR	\$250.00	Per Car
BSOR	\$500.00	Per Car	FCRD	\$600.00	Per Car
BVRY	\$199.00	Per Car	FEC	\$200.00	Per Car
CAGY	\$500.00	Per Car	FMID	\$200.00	Per Car
CALA	\$250.00	Per Car	FNOR	\$200.00	Per Car
CEIW	\$294.00	Per Car	FRR	\$460.00	Per Car
CFE	\$200.00	Per Car	FRVT	\$134.00	Per Car
CFWR	\$400.00	Per Car	GC	\$565.00	Per Car
CHAT	\$500.00	Per Car	GDLK	\$241.00	Per Car
CIND	\$565.00	Per Car	GET	\$400.00	Per Car
CIRR	\$565.00	Per Car	GFRR	\$500.00	Per Car
CLNA	\$300.00	Per Car	GITM	\$600.00	Per Car
CN	\$435.00	Per Car	GITM (Wharf)	\$200.00	Per Car
CNUR	\$75.00	Per Car	GNRR	\$550.00	Per Car
CNZR	\$65.00	Per Car	GR	\$565.00	Per Car
with forwarding instructions			GRWR	\$180.00	Per Car
CNZR	\$250.00	Per Car	GSWR	\$500.00	Per Car
without forwarding instructions			GU	\$125.00	Per Car
COEH	\$565.00	Per Car	GWRC	\$250.00	Per Car
CPDR	\$565.00	Per Car	HIRR	\$450.00	Per Car
CPRS	\$435.00	Per Car	HOG	\$565.00	Per Car
			HRRC	\$300.00	Per Car

IAIS	\$400.00	Per Car
IANR	\$475.00	Per Car
ICE	\$400.00	Per Car
INRD	\$300.00	Per Car
IORY	\$200.00	Per Car
IR	\$235.00	Per Car
ISRR	\$565.00	Per Car
ISW	\$565.00	Per Car
JAIL	\$1,000.00	Per Car
KCS	\$241.00	Per Car
KWT	\$565.00	Per Car
LIRC	\$300.00	Per Car
LBR	\$250.00	Per Car
LSRC	\$275.00	Per Car
LT	\$427.00	Per Car
LVRJ	\$400.00	Per Car
MB	\$565.00	Per Car
MCER	\$293.00	Per Car
MGRI	\$200.00	Per Car
MHWA	\$460.00	Per Car
MJ	\$97.00	Per Car
MMID	\$565.00	Per Car
MMRR	\$200.00	Per Car
MNBR	\$200.00	Per Car
MQT	\$500.00	Per Car
MRS	\$83.00	Per Car
MS	\$565.00	Per Car
MSO Defiance, OH	\$400.00	Per Car
MSO Ft. Wayne, IN	\$390.00	Per Car
MSTR	\$565.00	Per Car
MVRY	\$565.00	Per Car
NCVA	\$565.00	Per Car
NERR	\$500.00	Per Car
NOW	\$250.00	Per Car
NS	\$435.00	Per Car
NSR	\$250.00	Per Car
NYA	\$390.00	Per Car
NYLE	\$200.00	Per Car
NYNJ	\$500.00	Per Car
NYOG	\$435.00	Per Car

NYSW	\$500.00	Per Car
OHCR	\$500.00	Per Car
PAL	\$250.00	Per Car
PAS	\$450.00	Per Car
PDRR	\$250.00	Per Car
PJR	\$800.00	Per Car
PN	\$250.00	Per Car
POHC	\$565.00	Per Car
PR	\$700.00	Per Car
PSCC	\$325.00	Per Car
PUCC	\$148.00	Per Car
PVRR	\$250.00	Per Car
PW	\$565.00	Per Car
RJCL	\$500.00	Per Car
RSOR	\$200.00	Per Car
RSR	\$565.00	Per Car
SAPT	\$565.00	Per Car
SCRF	\$565.00	Per Car
SCTR	\$435.00	Per Car
SGLR	\$500.00	Per Car
SMV	\$500.00	Per Car
SRNJ	\$250.00	Per Car
ST	\$450.00	Per Car
SVHO	\$500.00	Per Car
SWP	\$475.00	Per Car
TCWR	\$300.00	Per Car
TKEN	\$435.00	Per Car
TNHR	\$390.00	Per Car
TPW	\$565.00	Per Car
TRRA	\$119.00	Per Car
TSRR	\$550.00	Per Car
TTIS	\$600.00	Per Car
TTR	\$300.00	Per Car
TYBR	\$265.00	Per Car
UP	\$445.00	Per Car
URR	\$451.00	Per Car
VRRC	\$565.00	Per Car
VTR	\$435.00	Per Car
WC	\$435.00	Per Car

WE	\$165.00	Per Car
WGCR	\$565.00	Per Car
WMI	\$350.00	Per Car
WSOR	\$450.00	Per Car
WTNN	\$500.00	Per Car
WTRM	\$400.00	Per Car
WTRY	\$565.00	Per Car
WW	\$500.00	Per Car
YARR	\$565.00	Per Car
YB	\$565.00	Per Car
YRC	\$565.00	Per Car

If railcars are returned, forwarded or require holding, CSXT may assess a charge of \$435 per railcar, or the charge for the specified interchange listed in Item 9.3, against the Carrier that misdelivered the railcar to us. CSXT may also apply a charge of three dollars (\$3) per mile travelled when CSXT has transported such railcar away from the interchange location, with a hundred (100) mile minimum.

GLOSSARY (9.3)

The following definitions are provided solely as a reference to certain words and phrases used in relation to these Terms and Conditions; they are not intended to serve as complete definitions or to counter definitions that may appear in other CSXT or industry publications.

AAR – The Association of American Railroads is the industry’s leading trade organization, and is dedicated to improving the efficiency, safety and service of the railroad industry.

Actual Placement – The placement of a railcar at origin or destination, or any other agreed upon point, for loading or unloading.

Agent – Any third party performing an obligation of a Customer under these Terms and Conditions or a contract with CSXT.

Carmack Amendment – Title 49 of the United States Code, section 11706, and associated regulations.

Carrier – CSXT and any other participating rail common carrier.

Carrier Car – Any railcar owned or leased by a rail common carrier.

Close Clearance – Any track clearance not in compliance with the requirements of CSXT’s current Standard Guidelines and Specifications for the Design and Construction of Private Sidetracks.

Closed Gate – A Station is considered ‘Closed Gate’ with regards to railcars that will remain in CSXT’s serving yard until the Customer provided specific placement instruction to CSXT via ShipCSX. A Station may be Open Gate for some commodities or railcars and Closed Gate for other commodities or railcars.

Consignee – The party to whom a shipment is consigned. The Consignee is usually, but does not have to be, the Receiver.

Consignor – The party in whose name a railcar is ordered for loading; the party consigning a shipment; or the party who furnishes forwarding instructions. The Consignor is often, but not always, the Freight Payer.

Constructive Placement – The holding of a railcar on CSXT’s tracks when Actual Placement of the railcar is not possible due to causes attributable to the Customer, in whole or in part.

Contract of Carriage – the contract or quasi-contract for transportation established by the Shipping Instruction, whether pursuant to common carrier pricing or a commercial contract between CSXT and a Customer.

Customer – Any Consignor, Consignee, Receiver, or Freight Payer.

Day – A twenty-four (24) hour period (calendar day), or part thereof.

Demurrage – The fee imposed for the extended usage of a CSXT asset attributable to the Customer.

Dimensional Load – A Shipment that exceeds CSXT’s standard published clearances for a specific route of movement.

Diversion – An order provided by a Freight Payer or its Agent instructing that a railcar be delivered to a location other than the one indicated on the original Shipping Instruction.

Force Majeure Event – The following conditions are, or are deemed to be, Force Majeure Events: Act of God; authority of law; labor dispute; weather impediments; fire explosion; war; Insurrection; threatened or actual act of terrorism; or other like causes beyond one’s reasonable control. Downturns in the economy and changes in market conditions are NOT considered force majeure conditions. Force majeure can not excuse non-compliance with safety requirements and regulations.

Freight Payer – The Customer primarily responsible for paying the line-haul freight charges for transportation provided by CSXT.

Freight Payer Assigned Railcar – Specific empty railcar assigned to a particular Freight Payer for their exclusive use.

Governmental Requirements – Any and all laws, regulations, governmental rules, and orders.

Hazardous Materials – Materials categorized as hazardous materials by the U.S. Department of Transportation under the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801, et seq.) and the Hazardous Materials Regulations (49 C.F.R. Parts 170-179) issued thereunder, as amended from time to time.

Holidays – CSX may observe the following holidays –
Thanksgiving Day
Day After Thanksgiving
Christmas Eve
Christmas Day
New Year’s Eve
New Year’s Day

Intermediate Switch – The movement of railcars in switch service from the interchange tracks of one carrier to the interchange tracks of another carrier at the same station.

Intra-District Switch – The movement of railcars by one carrier from one location to another within the switching limits of a station or switching district.

Intra-Plant Switch – A switching movement from one location to another location within the confines of a Customer facility.

Joint Terminal – A terminal at a station served by CSXT that is operated jointly by CSXT and another railroad.

Lease Track – Track leased to a Customer through a written lease agreement.

Loading – The complete or partial loading of a railcar in conformity with loading and clearance rules.

Loaded Railcar – A railcar that is completely or partially loaded.

Locomotive Switch – A movement of a locomotive within a switch district, wherein the locomotive moves on its own wheels but not under its own power.

Open Gate – A Station is considered ‘Open Gate’ with regards to railcars that CSXT will deliver upon determining that the Station has space to receive the railcar. No specific placement instruction will be accepted for Open Gate railcars. A Station may be Open Gate for some commodities or railcars and Closed Gate for other commodities or railcars.

Order Date – The date for which a Customer requests a railcar to be furnished for loading or unloading.

Placement – Refers to either Constructive Placement or Actual Placement.

Private Car – A railcar that is not owned or leased by a rail common carrier.

Private Car Storage – The fee imposed for the occupation of CSXT’s owned or controlled tracks by a Private Car.

Private Track – Tracks that are not owned or leased by CSXT.

Receiver – The party to whom the Shipment is to be physically delivered.

Reciprocal Switch – The movement in switching service for loading or unloading, immediately preceding or following a line-haul movement in revenue service over another railroad, from or to the point of interchange with the connecting railroad at the stations identified in Publication CSXT 8101.

Reconsignment – The issuance of a new Shipping Instruction by the Freight Payer that changes the Consignee of a railcar, or a change in the Freight Payer of a Shipment.

Release – Occurs when CSXT is advised that a railcar, identified by number and location, is empty, or when new Shipping Instructions are received. Railcars may only be released when it is accessible to CSXT’s crew to pull.

Reloading – When a railcar that has been unloaded by a Customer is held for loading by the same Customer.

RSSM – Rail Security-Sensitive Materials from one or more of the categories and quantities of hazardous materials set forth in 49 C.F.R. §1580.100(b), including:

- (1) A railcar containing more than 2,268 kg (5,000 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material, as defined in 49 CFR 173.50;

- (2) A tank car containing a material poisonous by inhalation as defined in 49 CFR 171.8, including anhydrous ammonia, Division 2.3 gases poisonous by inhalation as set forth in 49 CFR 173.115(c), and Division 6.1 liquids meeting the defining criteria in 49 CFR 173.132(a)(1)(iii) and assigned to hazard zone A or hazard zone B in accordance with 49 CFR 173.133(a), excluding residue quantities of these materials; and
- (3) A railcar containing a highway route-controlled quantity of a Class 7 (radioactive) material, as defined in 49 CFR 173.403.

Shipment – Any railcar(s) Tendered to CSXT for transportation.

Shipping Instruction – A Uniform Straight Bill of Lading or Electronic Data Interchange packet in a form acceptable to CSXT.

Sidetrack – any Private Track that provides access to a Customer facility.

Station – Any location included in the Tariff OPSL 6000-Series.

Team Track – Any tracks owned or controlled by CSXT that are designated by CSXT as team tracks where railcars may be loaded and unloaded by multiple third parties.

Tender – The notification of arrival or Constructive Placement, or the Actual Placement, of an empty or loaded railcar at a Customer facility; or the notification, by a Consignor or Consignee to a Carrier, that a railcar is ready for pick-up.

Tolerance – The greatest acceptable difference in weights due to variation in scales or weighing technique.

Ton – 2,000 pounds, avoirdupois weight.

Uniform Freight Classification – The Freight Tariff Uniform Freight Classification 6000 Series tariff published by Railinc.

Unit Train – any block of at least sixty railcars, for which CSXT’s line-haul service is scheduled through the Unit Train Management System. Empty railcar sets routed to a scheduled reservation in the Unit Train Management System are also Unit Trains.

QUICK LIST OF CHARGES (9.3.1)

Here is a convenient list of the most common, but not all, charges established in these Terms and Conditions:

CHARGE NAME	SECTION	CHARGE AMOUNT
MANUAL SHIPPING INSTRUCTIONS	1.2.1	\$50 per emailed Shipping Instruction for carload shipments \$50 per emailed Shipping Instruction for Unit Trains
RECONSIGNMENT	1.2.4	\$275 per railcar \$2,750 for blocks of 10 or more railcars
DIVERSION	1.2.4	\$275 per railcar \$2,750 for blocks of 10 or more railcars
OTHER CHANGES TO SHIPPING INSTRUCTIONS	1.2.5	\$275 per railcar or \$2,750 for blocks of 10 or more railcars
LATE DELIVERY OF SHIPPING INSTRUCTIONS	1.2.6	\$625 per railcar
EMPTY CARRIER CARS ORDERED AND NOT USED	1.3.2	\$375 per railcar - cancelled less than 7 days prior or up to 3 days after the order delivery \$300 per railcar - placed at industry
SAFE LOADING OF RAILCARS	1.3.3	\$5,000 for the first offense, \$10,000 for the second offense, and \$15,000 for each subsequent occurrence involving unsafely loaded railcars charges.
INSPECTIONS OR ADJUSTMENTS	1.3.4	\$2,650 per railcar minimum
PROPER BILLING OF HAZARDOUS MATERIALS	1.3.5	\$3,000 per railcar
RELEASES OF NON-HAZARDOUS MATERIALS (NAR)	1.3.7	\$2,575 per railcar per event
SAFE RETURN OF EMPTY RAILCARS	1.3.8	Per railcar per event
CLEANING CARS	1.3.9	\$350 per railcar minimum
FURNISHING CARRIER RAILCARS THAT SUBSEQUENTLY MOVE ON ANOTHER CARRIER	1.3.10	\$2,750 per Carrier car
EXCESSIVE DETENTION OF CARRIER CARS (CARS NOT RELEASED IN 10 DAYS)	2.1.3	\$125 per car per day
HOLDING HEAVY DUTY FLAT CAR SHORT OF DESTINATION	2.3.1	\$500 per car per day
OPEN GATE YARD DEMURRAGE	2.4	\$75 per railcar
DEMURRAGE	2.5	see page 12 for chart
PRIVATE CAR STORAGE	2.5	see page 12 for chart
SIDETRACK CONTINUATION CHARGE	3.1.9	\$25,000 0 Annual Carloads \$16,000 1-12 Annual Carloads
INTRA-PLANT SWITCHING – RSSM	4.1	\$625 per railcar
INTRA-PLANT SWITCHING	4.1	\$210 per railcar
INTRA-DISTRICT SWITCHING	4.1	\$600 per railcar

CHARGE NAME	SECTION	CHARGE AMOUNT
LOCOMOTIVE SWITCH	4.1	\$600 per locomotive
EXTRA OR SPECIAL SWITCH	4.1	\$5,000 per occurrence per crew shift
SPECIAL TRAIN SERVICE	5.1.2	\$140 per mile, minimum of \$30,000
CANADIAN CUSTOMS HOLDS	5.2.3	\$2,000 (U.S.) per railcar hold fee
BORDER PROTECTION	5.2.4	\$550 (U.S.) per railcar switch charge
U.S. CUSTOMS	5.2.4	\$550 (U.S.) per railcar
U.S. CUSTOMS AND BORDER PROTECTION	5.2.4	\$200 (U.S.) per railcar for erroneous or incomplete Customs documentation
BORDER FEES	5.2.5	\$25 (U.S.) per railcar for Customs paperwork and processing
TURNING CARS	5.3	\$1,000 per railcar
WEIGHING	5.4	\$200 per railcar - private scales \$500 per railcar - railroad scales
OVERLOAD	5.4.3	\$1,150 per overloaded railcar, plus applicable demurrage charges
UNIT TRAIN RESERVATION	5.5.3	\$3,250 - changes made <48 hours notice
HOLDING OF TRAIN	5.5.4	\$11,250 per Unit Train held per Day – non-hazardous cargo \$25,000 per Unit Train held per day – regulated, hazardous commodities
RECREWING	5.5.5	\$3,000 per recrew
POWER	5.5.6	\$100 per hour per locomotive
PRELIMINARY ENGINEERING REVIEW	5.6.3	\$2,500
IMPROPER TENDER OF TIH HAZARDS	5.6.5	\$5,000

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If you have any questions about the terms and conditions,
or about anything related to CSX, please contact:
1-877-ShipCSX (1-877-744-7279).

For more information, please visit [csx.com](https://www.csx.com)





EXHIBIT D

FREIGHT TARIFF 6004-D

Demurrage & Storage Rules and Charges

Applying at all NS points in the United States and other points as specifically provided herein; also at points on other roads (see Item 40)

Effective: January 1, 2026

Issued: January 1, 2026

*Issued By:
Pricing Services
Norfolk Southern Railway Company
and Consolidated Subsidiaries
650 West Peachtree St NW
Atlanta, GA 30308*



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ITEM 20 – CANCELLATION NOTICE

This tariff cancels Rates, Rules, Regulations and Charges published in Demurrage Rules and Charges and Storage Provisions in the following Tariffs:

NS Tariff 6004-C and Supplements 1 through 5

ITEM 40 - LIST OF PARTICIPATING CARRIERS

ABBREVIATION	NAME OF CARRIER
NS	Norfolk Southern Railway Company and Consolidated Subsidiaries Includes the following subsidiaries and affiliated carriers: Norfolk Southern Railway Company Alabama Great Southern Railroad Company The Camp Lejeune Railroad Company Chesapeake Western Railway Cincinnati, New Orleans, and Texas Pacific Railway Company The Central of Georgia Railroad Company Georgia Southern and Florida Railway Company State University Railroad Company Tennessee, Alabama & Georgia Railway Company Tennessee Railway Company
	All NS Handling Line Stations on carriers named in note 3700 of The Official Railroad Station List OP&S 6000-series. (See Item 60 & Note 1 of this item)

Note 1 - The provisions of this tariff will also apply on traffic to or from Norfolk Southern Handling Lines as defined in Note 3700 of OP&S 6000-Series when traffic is billed from or to the NS station numbers assigned to the handling line station. The carriers shown in Column 1 of Note 3700 are a party to this tariff except where pricing authorities provide for specific demurrage provisions.

ITEM 60 - APPLICATION OF REFERENCED PUBLICATIONS

The following publications contain rules, regulations, charges and allowances specifically referred to herein or that may apply directly or indirectly along with the terms of demurrage, storage and other matters that are covered in this publication.

NS Conditions of Carriage #1-Series
NS Conditions of Carriage #2-Series (Coal)
NS 6306 series - Rules and Regulations for Handling Municipal Solid Waste, Contaminated Soil, Hazardous Materials, and Related Articles
NS 8001 series - Switching
NS 8002 series - Accessorial Services
AAR 2 series - Hazardous Materials Shipping Descriptions (49-series STCC numbers)
BOE 6000 series - Bureau of Explosives Rules
RER 6411 series - Official Railway Equipment Register
RPS 6007 series - Mileage Allowances and Rules
RPS 6740 series - Heavy Duty Flat Car Charges
OP&S 6000 series - Official Railroad Station List
STCC 6001 series - Standard Transportation Commodity Code
UFC 6000 series - Uniform Freight Classification

ITEM 80 - REFERENCE TO TARIFFS, ITEMS, NOTES, AND RULES

Where reference is made in this tariff to tariffs, items, notes, the glossary, rules, etc. such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, the glossary, and rules.

ITEM 100 - CONSECUTIVE NUMBERS

Where consecutive numbers are represented in this tariff by the first and last numbers connected by the word “to” or a hyphen they will be understood to include both of the numbers shown. If the first number only bears a reference mark, such reference mark also applies to the last number shown and to all numbers between the first and last numbers.

ITEM 200 - GLOSSARY OF TERMS

1. **Actual Placement:** When a car is placed in an accessible position for loading or unloading or at a point designated by Consignor or Consignee.
2. **Assignee:** A shipper who has requested and has been assigned cars to a specific pool of cars for their use.
3. **Assigned Car:** A car of any ownership specifically requested and assigned to a shipper from a pool of assignment service cars.
4. **Car Days:** A twenty-four (24) hour period or fraction thereof commencing 0000 hours (Local Time) after actual or constructive placement until the car is released and available to NS.
5. **Closed Gate:** When a car cannot be placed on Consignee's siding at time of arrival due to siding having a locked gate, door and/or standing instructions not to place any cars unless the Consignee first contacts NS for placement instructions. All cars are constructively placed at time of arrival.
6. **Consignee:** The party to whom a shipment is consigned or the party entitled to receive the shipment. For purposes of this tariff, Consignee includes any person who receives railcars from a rail carrier for unloading, as more specifically described in 49 CFR Part 1333.
7. **Consignor:** The party in whose name cars are ordered. For purposes of this tariff, Consignor includes any person who receives railcars from a rail carrier for loading, as more specifically described in 49 CFR Part 1333.
8. **Constructive Placement:** When a car cannot be actually placed because of any condition attributable to the Consignor or Consignee, including when a car arrives at the serving yard and is available for placement (e.g. Available But Not Ordered), such car will be held at an available hold point and notice will be given the Consignor or Consignee that the car is held awaiting instructions. However, cars actually placed on customer siding will be considered constructively placed and no notification provided. Car Days will begin if instructions to NS are not received before 0000 hours (see Car Days) of day following notification.
9. **Credit Day:** Non-chargeable day. Credits can only be earned on those cars released to carrier for further disposition, and can only offset Car Days for cars with the same Per Car Daily Charge.
10. **Cutoff Time:** The designated time prior to a service window in which a switch request must be submitted in order to be fulfilled for the Consignor/Consignee to receive a switch during that service window.
11. **Electronic Means:** Any approved electronic device (i.e. **AccessNS** or NS mobile application) used to communicate to Operations & Service Support (OSS) the disposition of a car.
12. **Forwarding Instructions:** A bill of lading or other suitable order containing all the necessary information to transport the shipment to final destination. Bill of lading or other suitable order must be given to NS via electronic data interchange.
13. **Holidays:** The following days will be considered NS Holidays: New Year's Eve Day, New Year's Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, The Day After Thanksgiving, Christmas Eve Day, Christmas Day.
14. **Hold Point:** The rail station where Assigned Cars are made available to the shipper.
15. **Lease Track:** Track (s) assigned to a user by written agreement. Lease Track will be treated the same as private track.
16. **Loading:** The complete or partial loading of a car in conformity with NS loading and clearance rules, and the furnishing of forwarding instructions.
17. **LOPA:** Local Operating Plan Adherence (LOPA) measures the compliance to the instructions in the customer work order. In the event of non-compliance in the form of a car specific service interference attributed to issues for which the customer is responsible, the customer will receive a LOPA failure notification.
18. **Merchandise Unit Train:** A railway train with a minimum of 50 cars that is permitted and approved by NS to move in Merchandise Unit Train service and where all of the customer's railcars are moving from a single origin to a single destination.
19. **NOPA:** A courtesy notification that a consignee's rail car has arrived to the serving yard and is either available for ordering in (closed gate) or will be placed on the following service day (open gate).

20. **NS Track:** All tracks which NS provides for its own uses and purposes and other tracks located inside of its right-of-way or yards and terminals.
21. **Open Gate:** When a Consignee does not place any restrictions (physical or otherwise) on NS to place cars on their siding upon arrival.
22. **Origin Turnover:** Origin Turnover occurs when a car is loaded, and Consignor authorizes the carrier to accept shipping instructions from another party, while the car is still at origin.
23. **Ordered Placed:** The date and time that a car is to be placed on a private track.
24. **NS Original ETA:** Following interchange or release of shipment and complete billing to final destination, the first reported movement on Norfolk Southern Railway Company (NSR) will generate the NSR Original Estimated Time of Availability (ETA). Though the time of availability may change during transit due to delays or advances enroute, it is the original NSR ETA against which an early or late shipment will be measured. NSR Original ETAs are accessible to the customer via **AccessNS**.
25. **Originating Storage:** Originating storage occurs when a private car has been pulled loaded and is held on railroad owned tracks awaiting forwarding instructions.
26. **Per Car Daily Charge:** The daily demurrage/storage charge applicable to a car.
27. **Private Car:** A car bearing other than railroad reporting marks and which is not a Railroad-Controlled Car.
28. **Private Track:** Trackage assigned for individual use including privately owned or leased tracks.
29. **Public Delivery Track:** Any accessible track open to the general public for loading or unloading.
30. **Railroad-Controlled Cars:** A car with railroad reporting marks.
31. **Reload:** When the same car is completely unloaded and then replaced with a revenue load. Reloading will be expressed (with cars unloading demurrage) from the date of tender to the date forwarding instructions are received.
32. **Service Window:** The designated block of time within a service day that NS anticipates it will physically pull and place a customer's cars. These times are not guaranteed and delivery outside of these projected times will not impact the obligation to pay demurrage and storage charges.
33. **Stopped in Transit:** When cars are held enroute because of any condition attributable to the Consignor or Consignee, or owner of the lading.
34. **Storage Day:** A 24-hour period, or part thereof.
35. **Tender:** When NS gives notification that a car is available for unloading or loading by either actual or constructive placement to Consignor or Consignee.
36. **Time:** Local time is applicable. Time is expressed on the basis of the 24-hour clock. (EXAMPLE: 12:01 AM is expressed as 0001 hours.)
37. **Unloading:** The complete unloading of a car and notice from the Consignee that the car is empty and available to NS.

ITEM 300 - NOTIFICATION TO CUSTOMERS BY NS

1. The following notifications (including by Electronic Means) will be furnished as indicated:

Cars to be Delivered to Private Tracks

- (a) Notification of constructive placement on all cars held on NS tracks due to any condition attributable to Consignee or Consignor.
- (b) Delivery of car upon Consignee tracks will constitute notification.
- (c) Delivery upon industrial interchange tracks of Consignee or party entitled to receive same will constitute notification.

Cars to be Delivered to Public Tracks

Notice of arrival will be given to party entitled to receive notification when car is actually placed.

Refused Carload Freight

When advised of refusal of car at destination, notice will be sent or given to Consignor or owner of the lading.

2. Notification information provided:

- (a) Car Initial and Number
- (b) If contents transferred enroute, NS will furnish car initial and number of the original car and replacement car.

3. Methods and procedures for notification:

Notification may be sent or given by telephone communication or Electronic Means, (see Electronic Means, Item 200). When Consignor or Consignee utilizes an electronic or mechanical device (either in written, oral or keyed data form) notification left on such device will be considered as having been given to Consignor or Consignee, as of the date and time transmitted.

The Consignor/Consignee is responsible for providing NS with the correct contact or contacts for notification purposes.

ITEM 350 - NOTIFICATION TO NS

- (a) After Constructive Placement, Consignor/Consignee will have until 0000 hours (see Car Days, Item 200) of the next day to furnish required instructions or information.
- (b) If the Consignor/Consignee receives a local operating plan adherence (LOPA) failure notification, the Consignor/Consignee then must resubmit order/release instruction.
- (c) Notification by Electronic Means (see Electronic Means, Item 200) will be considered as having been received by NS at date and time Consignee or Consignor furnishes forwarding instructions or notification that car is available for movement.
- (d) Any notice sent by any Consignor/Consignee indicating an intention to not pay otherwise applicable demurrage or storage charges hereunder on a prospective basis, or instructing NS on a prospective basis not to deliver railcars if NS intends to impose otherwise applicable demurrage or storage charges hereunder, shall be void and shall have no force or effect regardless of whether NS responds to such notice.

ITEM 400 - SITUATIONS WHEN RELIEF IS PERMISSIBLE

1. **Weather Interference:** When because of earthquakes, tornadoes, hurricanes, floods or heavy snow, the operations of the Consignor or Consignee are disrupted, the demurrage/storage calculations will be adjusted to account for the disruption, provided the disruption exceeds (2) days in duration. Any cars under Constructive Placement (PCON) on the day of a disruption will also have car days adjusted to account for the disruption, if the disruption is affecting the ability to actually place the car that is under PCON.
2. **Frozen or Congealed Lading:** When at the time of placement, lading is frozen or congealed so as to require heating, thawing, or loosening to unload, Railroad will grant one (1) credit for each day a car under actual placement that has its lading heated, thawed or loosened, with a maximum of two (2) credits. All cars under Constructive Placement (PCON) at the time the lading contained in a car that has been actually placed is heated, thawed or loosened will receive an adjustment to car days to correspond with the cars that are actually placed, to the extent that the car(s) under PCON are in that status due to insufficient space at customer's facility.
4. **Strike Interference:** When it is impossible to load or unload or receive cars from or make cars available to NS because of strike interference at the point where the loading, or unloading or receipt of cars is to be accomplished, demurrage days will be charged at the rate of \$30.00 per day during the period of strike interference, provided:
 - (a) The disruption exceeds five (5) days in duration during one calendar month; and
 - (b) No Management personnel or reduced work force is available to perform work.

The provisions of this item will not apply to cars for unloading when waybills are dated four (4) days after the beginning of strike interference, and cars for loading when ordered after the beginning and prior to the ending of strike interference.

ITEM 450 - CARS AWAITING CUSTOMS INSTRUCTIONS, PAYMENT OF DUTIES

Cars delayed on carriers' tracks longer than forty-eight (48) hours, awaiting completion of customs documentation or payment of duties will begin to accrue normal demurrage and/or storage charges.

ITEM 500 - CARS SUBJECT TO DEMURRAGE

GENERAL APPLICATION (See Exception)

All Railroad-Controlled Cars held for or by Consignors or Consignees for any purpose are subject to demurrage rules and charges described in this tariff, except as follows:

1. Demurrage provisions in this tariff will not apply when demurrage rules are provided in contracts or other private agreements.
2. Private cars are not subject to demurrage rules except when placed on Public Delivery Tracks for loading or unloading.
3. Assigned cars returned empty (auto parts racks allowed) to point of assignment while subject to storage rules.
4. If a car is rejected within 24 hours of actual placement, empty cars found to be unsuitable for loading.

Exception: Empty multi-level cars will not be subject to demurrage rules and charges.

ITEM 550 - CARS SUBJECT TO STORAGE

APPLICATION: This item applies to:

1. Loaded Private Cars and empty Private Cars held on NS tracks under constructive placement after notice of arrival is given to the Consignee or Consignor. Time accrues until the car is "ordered placed" (see Item 200) on private tracks.
2. Loaded Private Cars held on NS tracks waiting forwarding instructions from the Consignor. (see note)

Note: Private Cars loaded and turned over to a third party at the same origin will be governed by this rule. Shippers may invoke this rule by tendering an ORIGIN TURNOVER FORM to Norfolk Southern. This function is available on the **AccessNS** portal or by calling the Norfolk Southern Agency Operations at 800-854-2780. If such third-party declines responsibility for storage payments, this note does not apply and Shipper retains responsibility for payment of storage charges.

NON-APPLICATION: Private Car storage provisions do not apply to Private Cars located on private or leased tracks.

ITEM 600 - RULES GOVERNING CARS HELD FOR LOADING

Release: (See Notes 1 and 2 below)

- (a) A car is released as of the date and time NS receives advice that the car is available and forwarding instructions are provided.
- (b) When Consignor does its own switching, the time a car is held for loading will commence once empty car(s) are placed on interchange tracks, and will continue until (i) car(s) are returned to an industrial interchange track, and (ii) NS receives forwarding instructions.
- (c) Cars found to be overloaded or improperly loaded while at origin will not be considered released until the load has been adjusted.

Note 1: Railroad-Controlled Cars loaded and turned over to a third-party at the same origin will be governed by this rule. Shippers may invoke this rule by tendering an ORIGIN TURNOVER FORM to Norfolk Southern. This function is available on the **AccessNS** portal or by calling the Norfolk Southern Agency Operations Center at 800-854-2780.

Note 2: The Consignor/Consignee shall adhere to the established cutoff times and have all switch requests submitted accordingly.

Computation:

- (a) Car Days will be computed from the first 0000 hours (see Car Days, Item 200) after Tender (i) until released with forwarding instructions for Railroad-Controlled Cars, or (ii) until placement is made for Private Cars. In the case of Private Cars, the separate calculation for originating storage charges will be computed from the time that the loaded car is pulled and held on railroad-controlled tracks by NS without forwarding instructions to time of receipt of required forwarding instructions.
- (b) On cars placed prior to date for which ordered, Car Days will be computed from the first 0000 hours of the day for which the car was ordered until the car is released.
- (c) Empty cars placed without being ordered will be considered as having been ordered and actually placed on that day.

Credits:

- (a) Five (5) Credit Days will be earned for each Railroad-Controlled car released for which forwarding instructions have been received.
- (b) Zero (0) Credit Days will be earned for each empty private car under constructive placement.
- (c) Zero (0) Credit Days will be earned for each loaded private car pulled for which forwarding instructions have not been received.

ITEM 650 - RULES GOVERNING CARS HELD FOR UNLOADING

Release: (See Note below)

- (a) A car is released as of the date and time NS receives advice that the car is empty and is available.
- (b) Cars placed on interchange tracks of a Consignee that performs its own switching must also be returned to the same industrial interchange track for release.
- (c) A car is released when the same car is unloaded and reloaded, when forwarding instructions are received.
- (d) If a customer advises NS that an empty car is available to be pulled, but when NS arrives to pull the car and a release order has not been provided by customer, the empty pull timestamp represents release.

Note 1: The Consignor/Consignee shall adhere to the established cutoff times and have all switch requests submitted accordingly.

Computation: Car Days will be computed from the first 0000 hours (see Car Days, Item 200) after tender until release.

Credits:

- (a) One (1) Credit Day will be earned for each Railroad-Controlled car released from unloading.
- (b) One (1) additional Credit Day will be provided when the same car is reloaded with a revenue load. (Ex: When car is held for revenue loading after being emptied, in one continuous transaction, a total of two (2) Credit Days will be earned.

ITEM 700 - RULES GOVERNING CARS HELD FOR PURPOSES OTHER THAN LOADING OR UNLOADING

This Item applies to cars held:

- (a) On orders of the Consignor or Consignee.
- (b) While awaiting Disposition from the Consignor or Consignee.
- (c) As a result of conditions attributable to the Consignor or Consignee.

Note: Does not apply to origin turnovers.

Disposition: That information, which allows NS to either tender or release the car from the Consignor's or Consignee's account.

Release: Date and time that NS receives advice that the car is released and forwarding instructions are given on cars.

Computation: Car Days will be computed from the first 0000 hours: (see Car Days, Item 200).

- (a) After Tender until Release, on cars: (1) Partially unloaded, (2) Reconsigned.
- (b) After Tender until date of refusal on refused loaded cars (Consignee).
- (c) After arrival at final online destination until date of credit approval/received payment on non-credit cars.

Credits: No Credit Days will be earned for a car that is released.

ITEM 750 - RULES GOVERNING MERCHANDISE UNIT TRAIN DETENTION

Merchandise Unit Trains as defined in Item 200, shall be subject to the following provisions:

1. Merchandise Unit Train service will be performed at the convenience of railway and only for those facilities located on NS, or a short line that interchanges with NS.
2. NS will provide an electronic notice as outlined in Item 300.

Cars Held for Unloading Computation:

Hours will be computed from actual notice of arrival (i) until the last railcar of the unit is empty, released and available for Railroad-Controlled Cars; or (ii) until Actual Placement is made for Private Cars.

Cars Held for Loading Computation:

Hours will be computed from the actual notice of arrival (i) until NS receives advice that the last railcar of the unit is available and forwarding instructions are provided for Railroad-Controlled Cars; or (ii) until Actual Placement is made for Private Cars.

Free Time:

- For purposes of this Item, "Free Time" is defined as the period of time allowed to load or unload cars before Merchandise Unit Train Detention Charges begin to accrue.
- Merchandise Unit Trains consisting entirely or partially of Railroad-Controlled Cars will have 24 hours Free Time.
- Merchandise Unit Trains consisting entirely of Private Cars will have zero (0) Free Time after notice of arrival and while held on railway owned tracks.

Merchandise Unit Train Detention Charges:

A charge per Merchandise Unit Train of \$800.00 for each hour, or fraction thereof, that a railcar or railcars contained in a Merchandise Unit Train are detained beyond the Free Time, or the extended Free Time (as outlined in Detention Rule 6 below) will be assessed, as applicable.

Detention Rules:

1. The charges stated above are in addition to any applicable locomotive charges. If a customer requests the release of a locomotive(s) from a Merchandise Unit Train to mitigate charges set forth in Item 750, or if NS determines that locomotive release is required based on operational needs, a charge of \$3,500 per occurrence will apply. A separate \$3,500 charge will be assessed to return the locomotive as required.
2. Charges are per Merchandise Unit Train and are in lieu of demurrage and storage charges which might otherwise be payable under NS Demurrage and Storage Tariff 6004-D series, Items 1010 and 1012, or successor items.
3. Merchandise Unit Train charges will be accrued and billed separately from any charges for single cars. Cars in Merchandise Unit Trains will not earn Credit Days.
4. Remaining Free Time from one Merchandise Unit Train cannot be used for a different Merchandise Unit Train.
5. All days count including Saturday, Sunday and holidays.
6. In the event that a shipment cannot be unloaded because of frozen commodity and Consignees so notify NS, then the unloading Free Time for that shipment will be extended by an additional twenty-four (24) hours. A shipment that is held in excess of the extended Free Time will be subject to the Merchandise Unit Train Detention Charges referenced above, or a one-time frozen commodity charge of \$12,000.00, whichever is less.

ITEM 760 - RULES GOVERNING MERCHANDISE UNIT TRAINS STOPPED IN TRANSIT

Merchandise Unit Trains stopped in transit due to the customer being unable to receive the train shall be subject to stoppage charges as follows:

- (a) Merchandise Unit Trains shall be subject to a stoppage charge of \$5,000.00.
- (b) In addition to the stoppage charge, if disposition or release on the stopped train has not been received by NS after 24 hours following the time the train was stopped, then Merchandise Unit Train Detention Charges and terms shall apply. Such charges shall accrue until the stop is lifted by the customer and NS is cleared to move the train towards destination.

ITEM 800 - RULES GOVERNING STORAGE OF ASSIGNED CARS

1. **NOTICE OF ARRIVAL:** Notice will be given assignee within 24 hours after arrival of car at Hold Point. (see Hold Point, Item 200)
 2. **STORAGE DAYS:** Chargeable storage days will commence from the first 0000 hour (see Time, Item 200) following notice of arrival and continue until the car is placed on demurrage status or is released from the assignment.
 3. **STORAGE RULES:**
 - (a) Storage charges will be assessed against assignee.
 - (b) Storage arrangements will be maintained individually by pool assignment number.
 - (c) Settlement of charges will be made on a monthly basis on all cars released from storage during each calendar month.
 - (d) One (1) Credit Day is given on each car placed in storage. Thereafter, storage charges accrue until the car is placed into service.
 - (e) Chargeable storage rate is \$40.00 per day.
-

ITEM 850 - RULES GOVERNING ORIGIN TURNOVERS

Origin Turnover:

An origin turnover occurs when a notification, submitted at origin by the party responsible for loading a railcar, informs NS that the party responsible for loading has completed the loading and is 'turning over' the railcar and its lading to another party. The party designated on the Origin Turnover becomes the Consignor and will be responsible for submitting final destination forwarding instructions to Norfolk Southern before the railcar is pulled. (See publication NS 8002-A, Item 6030). The party responsible for loading may submit an Origin Turnover using Norfolk Southern's web-based Diversion and Reconsignment application in the **AccessNS** portal.

There is no charge for origin turnovers submitted through Norfolk Southern's web-based Diversion and Reconsignment application in the **AccessNS** portal.

ITEM 900 - STORAGE OF RAILWAY EQUIPMENT MOVING ON OWN WHEELS

1. APPLICATION:

This item applies to railway equipment held on NS tracks that will or has moved on its own wheels, as freight, subject to transportation charges.

2. STORAGE DAYS WILL COMMENCE:

- (a) At origin or enroute: From the first 0000 hours (see Time, Item 200) following receipt of the equipment and continuing until a document is given to NS containing all necessary information to forward the equipment.
- (b) At destination: From the first 0000 hours (see Time, Item 200) after notice of arrival is given to Consignee and continuing until equipment is released from hold tracks. (Notice of arrival will be given Consignee within 24 hours after arrival of equipment at hold point).

3. STORAGE RULES:

- (a) Unless otherwise advised, charges will be assessed to Consignor, if delays occurred at origin or enroute, or Consignee if storage delays occurred at destination.
 - (b) Settlement of charges will be made on an individual basis for equipment released from storage during each calendar month.
 - (c) Zero (0) Credit Days will be allowed on each car released from storage.
 - (d) Chargeable storage rate is \$110.00 per day.
-

ITEM 950 - DEMURRAGE / STORAGE RULES

Billing will be rendered on a monthly basis for all cars released during a calendar month. Billing will be made per customer per station.

1. Billing cannot be combined for customers having facilities at separate stations.

2. Credit Days and Car Days for Railroad-Controlled cars held for unloading or other purposes will be kept separately from cars held for loading. Except as otherwise provided in Item 1000, Credit Days and Car Days for Private Cars for loading or unloading will be combined. Credits on Private Cars cannot be combined with credits on Railroad-Controlled cars.
3. Customer having two or more facilities at the same station with NS may combine the accounts into one if requested in writing.
4. Credit Days earned in one calendar month cannot be carried over to another month.
5. Demurrage/Storage charges will be assessed to Consignor at origin or to Consignee at destination as applicable.
6. All days count including Saturday and Sundays. Eleven (11) holidays will not be subject to demurrage (see Holidays, Item 200)
7. Demurrage/storage will be suspended while cars are in bad order, pull turn, or pull weigh status.
8. Except for (i) customer diverted railcars, (ii) Coal, Coke and Iron Ore shipments, or (iii) Merchandise Unit Trains, one (1) credit will be applied each day for loaded railcars or empty private railcars where NSR Original ETA is not met. Credits may be applied for early or late arrivals to loaded railcars and empty private railcars. Combined total credits pursuant to Items 950 and 1010 will not be limited. Credits will not be carried over to subsequent months.
9. Effective 7-1-2019: Disputes concerning demurrage/storage charges or computations must be submitted online via **AccessNS** by the fifth (5th) calendar day of the month following the accrual closing. Disputes after the fifth (5th) calendar date of the month must be submitted in writing within 30 days from the demurrage/storage invoice date and must include specific dates and events. Any Disputes received outside the foregoing time limits will be rejected.
10. If NS offers scheduled local service less than five (5) days per week, then NS will apply demurrage/storage credits for the difference between five (5) days and the Offered Service Days. These credits are in addition to the standard demurrage credits. When Offered Service Days is equal to or greater than five (5) days per week, then standard demurrage/storage credits apply.

Example: If the Offered Service Days=3 and standard demurrage credits=5 for loading, then every railcar will get 7 credits (5-3=2+5=7).

ITEM 1000 - DEMURRAGE / STORAGE CALCULATION

Credit Days and Car Days will be kept separately, and the following calculations will be made separately, for cars with different Per Car Daily Charges in Item 1010:

1. Total Car Days with the same Per Car Daily Charge per customer per location will be added. (Car/days are net of holidays (see Holidays, Item 200)).
2. Total Credit Days for all cars with the same Per Car Daily Charge will be added.
3. If total Credit Days equal or exceed total net Car Days with the same Per Car Daily Charge, demurrage/storage charges will not be assessed. Any excess Credit Days cannot be applied to cars with different Per Car Daily Charges.
4. If total net Car Days exceed the total Credit Days with the same Per Car Daily Charge, calculation of charges will be made as follows:
 - (a) Subtract total Credit Days from total Car Days to determine chargeable days.
 - (b) The number of chargeable days will be assessed as shown in Item 1010 (or Item 1012 for hazardous commodities).

ITEM 1010 - DEMURRAGE / STORAGE APPLICATION

Demurrage Application	Loading Credits	Unloading Credits	Per Car Daily Charge
Railroad-Controlled Cars, Except Below	5	1	\$ 210.00
Covered Coil Cars, Centerbeam Flatcars, Mechanical Refrigerated Cars, Heavy-Duty Flatcars	5	1	\$ 350.00

Cars Held	Origin/Destination Credits	Per Car Daily Charge
For Purposes Other than Loading or Unloading	0	\$ 140.00

Storage Application	Loading Credits	Unloading Credits	Per Car Daily Charge
Private Cars	0	0	\$ 110.00
Assigned Cars	1	0	\$ 40.00

ITEM 1012 - HAZARDOUS COMMODITIES

With respect to unloading credits, this provision applies in lieu of item 1010 for commodities listed below.

	Unloading Credits	Per Car Daily Charge
Hazardous Material other than TIH	0	\$ 100.00 (see Item 1015)
TIH Material identified in Note 1	0	\$ 3,000.00 (see Item 1015)

Note 1:

TIH STCC codes: 4821019, 4821261, 4821722, 4830030, 4904209 - 4904211, 4904879, 4907409, 4907434, 4909306 - 4909307, 4910370, 4916138, 4918180, 4918505, 4918507, 4920101 - 4920113, 4920115 - 4920116, 4920122, 4920135, 4920160, 4920164 - 4920165, 4920167, 4920173 - 4920175, 4920178, 4920180 - 4920181, 4920183 - 4920184, 4920187 - 4920189, 4920195 - 4920196, 4920300 - 4920325, 4920331, 4920337, 4920342 - 4920344, 4920346 - 4920349, 4920351 - 4920360, 4920368 - 4920369, 4920371, 4920373, 4920375, 4920378 - 4920383, 4920392, 4920394 - 4920396, 4920398 - 4920399, 4920502 - 4920505, 4920508 - 4920511, 4920513, 4920515 - 4920518, 4920522 - 4920523, 4920526 - 4920528, 4920530 - 4920531, 4920534 - 4920536, 4920547, 4920550, 4920556, 4920559, 4920570 - 4920571, 4920715, 4921000, 4921003 - 4921004, 4921006, 4921008 - 4921010, 4921016, 4921019 - 4921020, 4921023 - 4921024, 4921028, 4921063, 4921202, 4921207, 4921211, 4921213, 4921216, 4921239, 4921245, 4921248, 4921251 - 4921252, 4921254 - 4921255, 4921275, 4921287 - 4921288, 4921304, 4921401 - 4921402, 4921404 - 4921405, 4921413 - 4921414, 4921420, 4921438, 4921473, 4921487, 4921495, 4921497, 4921558, 4921587, 4921695, 4921722, 4921727, 4921730, 4921741 - 4921742, 4921744 - 4921746, 4921756, 4923113, 4923117, 4923209, 4923298, 4927004, 4927006 - 4927012, 4927014, 4927018 - 4927019, 4927022 - 4927028, 4927099, 4930024, 4930030, 4930050, 4930204, 4930260, 4931201, 4932010, 4932352, 4932385, 4933327, 4935231, 4936106, 4936110, 4936565

ITEM 1015 - STORAGE OF EXPLOSIVES, HAZARDOUS MATERIALS, SUBSTANCES OR WASTE

(Subject to publication BOE 6000 - hazardous materials regulations of the Department of Transportation)

The hazardous material charge shown in Item 1012 will be in addition to demurrage and storage charges provided in Items 1010 and 1100.

In addition, in the event that customer causes cars to be held on NS property in violation of 49 CFR 174.14, customer shall indemnify NS against (1) any governmental fines incurred as a result of such violation and (2) any costs or losses arising from any release from such cars caused by (i) defects in the cars, (ii) commodities being stored in rail cars beyond car-tolerance limits, or (iii) acts of God, such as hurricanes, tornados, earthquakes, fires, floods, etc., that occur while such cars are being held in violation of 49 CFR 174.14.

Application: This item applies to all cars held on NS tracks (excluding leased tracks) containing: (see note)

- (a) Class A, B or C Explosives, named in Part 172 Commodity List, Publication BOE 6000.
- (b) Hazardous materials, substances, or wastes requiring the use of 4-digit identification number on shipping document, placards or panels, as named in Part 11 Section 172.101, Publication BOE 6000.
- (c) In all cases, tariff NS 6306 applies.

Note: Private Cars loaded and turned over to a third party at the same origin will be governed by this rule. Shippers may invoke this rule by tendering an ORIGIN TURNOVER FORM to Norfolk Southern. This function is available on the **AccessNS** portal or by calling the Norfolk Southern Agency Operations at 800-854-2780.

ITEM 1100 - LEASE TRACK OVERAGE

In the event a customer makes arrangements with Norfolk Southern to have a lease track agreement at a certain location, and the number of private cars described in the lease track agreement at that location exceeds the capacity of the track space allotted pursuant to the applicable, lease track agreement, an overage charge of \$50.00 per car will be assessed on all cars exceeding the lease limit. The overage charge will be applied on all overage cars commencing at 00:00 the day following the day the lease limit was exceeded. A car is considered in lease track status if after notification of arrival, the car is not ordered before the beginning of the next Service Window. No Free Time or credits will be allowed. Lease track excess is not provided relief against NS holidays. Also an intra-terminal switch charge will be assessed when the cars are requested to be spotted, or moved from the plant to the lease track for forwarding.

SUMMARY OF REVISIONS

Issued: January 1, 2026

Effective: January 1, 2026

PAGE(S)	ITEM	ITEM DESCRIPTION	DESCRIPTION (CHANGES IN RED)
3	200	GLOSSARY OF TERMS	Definition of Constructive Placement modified to include Available But Not Ordered status.
6	600	RULES GOVERNING CARS HELD FOR LOADING	Increase of credit days to five (5) total for each Railroad-Controlled car released for which forwarding instructions have been received.
10	950	DEMURRAGE/STORAGE RULES	Note #10 example updated to emphasize how change impacts customers receiving less than five (5) days of service per week.
11	1010	DEMURRAGE/STORAGE APPLICATION	Loading Credits increased to five (5) days total.

EXHIBIT E

EXHIBIT “L”

From: LaGuardia, Julie E <Julie_E_Smith@CSX.com>
Sent: Tuesday, May 24, 2016 10:54 AM
To: LaGuardia, Julie E
Subject: FW: New Regulation on Demurrage Responsibility

From: CSX [mailto:info@csx.messages4.com]
Sent: Tuesday, July 15, 2014 2:03 PM
To: LaGuardia, Julie E
Subject: New Regulation on Demurrage Responsibility

This message contains graphics. If you do not see the graphics, [click here to view](#).



New Regulation on Demurrage Responsibility

Dear CSX Customer:

The Surface Transportation Board (STB) has issued a new regulation on demurrage responsibility which will take effect on July 15, 2014. The new regulation can be found at 49 C.F.R. § 1333.3. In adopting the new regulation, the STB has established that any person or entity receiving a rail car from a rail carrier (e.g., warehouses, factories, and grain elevators) who detains the rail car beyond the "free time" provided in the carrier's governing tariff is responsible for paying demurrage. Under the STB's regulation, that person or entity need not also be the consignee of the rail car or associated shipment.

The terms and conditions governing CSXT's assessment of demurrage and storage charges can be found in **Section 2 of its Publication CSXT 8100, entitled "Demurrage and Private Car Storage."** CSXT calculates and bills demurrage and storage monthly, in separate accounts based on, among other things, the loaded, empty, inbound, outbound, and hazardous material status of a given rail car, using a debit-days/credit-days system, as more particularly described in that Section. Demurrage and storage is owed when debit days as to an account for a given month exceed credit days as to that account, and is billed and payable in amounts also set forth in that Section.

Detailed information regarding CSXT's demurrage and storage terms and conditions can be found in section 2 of the Publication CSXT 8100. Should you wish to view Publication CSXT 8100 in its entirety, please click [here](#). If needed or helpful, a glossary of defined terms can be found in Section 9.4, currently beginning on page 53, of that publication.

If you have any questions about Publication CSXT 8100, please talk to your sales representative or email us at CSXT8100Questions@csx.com. For help with ShipCSX please call 1-877-ShipCSX (1-877-744-7279) options 2, option1.



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