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November 11, 2003  
VIA: UPS Overnight

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Mercury Building, #711  
1925 K Street, N.W.  
Washington, DC 20423-0001



Re: STB Finance Docket No. 34432  
Golden Isles Terminal Railroad, Inc.  
– Trackage Rights –  
CSX Transportation, Inc.  
**Notice of Exemption**

Dear Secretary Williams:

In accordance with the provisions of 49 C.F.R. 1180.4(g)(i) and 1180.6(a)(7)(ii), enclosed is a copy of the executed trackage rights agreement pertaining to the transaction that is the subject of this proceeding.

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

Respectfully,

ERIC M. HOCKY

**ENTERED**  
**Office of Proceedings**  
**NOV 12 2003**  
**Part of**  
**Public Record**

Enclosure

GOLLATZ, GRIFFIN & EWING, P.C.

WEST CHESTER

PHILADELPHIA

WILMINGTON

## **TRACKAGE RIGHTS AGREEMENT**

**THIS AGREEMENT**, entered into as of the 10th day of November 2003, by and between **CSX TRANSPORTATION, INC.**, a Virginia corporation, whose principal place of business is 500 Water Street, Jacksonville, Florida 32202, (hereinafter referred to as "Owner") and **GOLDEN ISLES TERMINAL RAILROAD, INC.**, a Delaware corporation, whose principal place of business is 4337 Pablo Oaks Court, Suite 104, Jacksonville, FL 32224 (hereinafter referred to as "User");

### **WITNESSETH:**

**WHEREAS**, User has entered into a lease, dated November 10, 2003, with Owner (the "Lease") of land and tracks in Savannah, Georgia (hereinafter referred to as the "Premises", and

**WHEREAS**, User has requested trackage rights over Owner's line of railroad between the Georgia Ports Authority's Garden City Terminal (the "Port") and Old Savannah Yard to access the Premises, and;

**WHEREAS**, Owner is agreeable to granting such rights to User under the following terms and conditions;

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

### **ARTICLE 1. GRANT OF TRACKAGE RIGHTS**

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

"From at or about Milepost A489± near the Port to Milepost S500± at or about the entrance to Savannah Yard plus sufficient head or tail room (i) from the north entrance to Old Savannah Yard, through Loricks Lead, out on Number One Main to Milepost A492±, and (ii) from the south entrance of Old Savannah Yard, through the Blossom signal, out on Mainline to Milepost S504±."

### **ARTICLE 2. USE OF SUBJECT TRACKAGE**

- A. User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be

diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

- B. Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner (not to be unreasonably withheld), preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purposes.
- C. Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

### **ARTICLE 3. RESTRICTION ON USE**

The Trackage Rights herein granted are granted for the sole purpose of User using same for intermodal bridge traffic only between the Port, the Premises and CSX Intermodal Inc.'s intermodal terminal adjacent to Savannah Yard, and movements in support of operations at the Premises and that intermodal terminal and User shall not perform any local freight service or other service whatsoever at any point located on the Subject Trackage.

### **ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS**

- A. When operating over the Subject Trackage, User's locomotives and crews shall be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.
- B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of Owner's representative or his designee (not to be unreasonably withheld).

### **ARTICLE 5. COMPENSATION**

- A. The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be thirty-four (0.34) cents per car mile (hereinafter referred to as the "Current Charge").
- B. User shall pay Owner a sum computed by multiplying: (i) the Current Charge, as may be revised in accordance with Article 6 by (ii) the number of cars (loaded and empty), locomotive and EOT units moved by User with its own crews and power over the Subject Trackage by (iii) the miles of Subject Trackage used. Each locomotive unit and EOT, for

the purpose of this Agreement shall be counted as one car. With respect to articulated units, the number of cars shall be determined by the AAR Car Type Code as defined in the UMLER Specification Manual. The second numeric in the Car Type Code field covering codes "Q" and "S" shall be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code "S566" would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units subject to change upon development of technology to separate units by Car Numbers.)

- C. Owner shall on or about the tenth day of each month render billing to User for User's previous month's use of the Subject Trackage computed in accordance with the terms and conditions of this Agreement.
- D. User shall furnish Owner all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. This procedure shall be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. The carriers shall determine the minimal data requirements.

#### **ARTICLE 6. REVISION OF CURRENT CHARGE**

The Current Charge shall be increased by one and one-half percent (1.5%) beginning November 10, 2005 and by one and one-half percent (1.5%) annually thereafter on November 10 of each year during the term of this Agreement.

#### **ARTICLE 7. PAYMENT OF BILLS**

- A. All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.
- B. All sums owed by User to Owner pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

#### **ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE**

- A. Owner shall maintain, repair and renew the Subject Trackage with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover shall not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in Article 15, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.
- B. Owner shall perform, at the expense of User, such additional maintenance as User may reasonably require or request.

#### **ARTICLE 9. INSURANCE**

- A. User shall procure, at its own expense, and maintain until all of its obligations under this Agreement have been fully discharged and performed, the following insurance coverages:
- (i) Railroad liability insurance, naming Owner as an additional insured, covering bodily injury and property damage, with full limit FELA coverage, coverage of liability for a foreign rolling stock and cargo in User's care, custody and control, accidental environmental liability coverage, products liability coverage and a severability of interest clause, with a coverage limit of not less than \$10,000,000 combined single limit per occurrence, and containing contractual liability coverage or an appropriate endorsement which will cover the obligations assumed by User under the Agreement.
  - (ii) Automobile liability insurance, naming Owner as an additional insured, covering injury and property damage liability arising out of the maintenance or use of owned, hired, or non-owned motor vehicles, with a coverage limit not less than \$5,000,000 per occurrence (if necessary, excess liability coverage can be used to meet this requirement.);
  - (iii) Railroad property insurance covering real and business personal property; bridges; tunnels and trestles; track and roadbed (excluding floods and earthquakes); property of others in the care, custody or control of the User (excluding foreign rolling stock and bill of lading); rolling stock; locomotives; work equipment; property in the course of construction;

contractor's equipment; property in the course of transit with a coverage limit of not less than \$5,000,000 per occurrence listing Owner as a loss payee, but only as its interest may appear.

- B. All insurance required hereunder shall be effected by valid and enforceable policies issued by insurer(s) of responsibility and authorized to do business in the State of Georgia, all subject to the reasonable approval of Owner. The required insurance will include waivers of subrogation rights endorsements, will not have any exclusion for liability relating to railroad operations, and will contain a provision for thirty (30) days written notice to Owner prior to any expiration or termination of, or any material change in, the coverage provided. User shall provide Owner with at least thirty (30) days' notice prior to such expiration, termination or material change in the insurance coverage. Prior to commencing Services under this Agreement and upon Owner's request thereafter, User will provide Owner with certificates of insurance (and, as requested by Owner, copies of the insurance policies and evidence of payment of all due premiums for such insurance). Notwithstanding any provision of this Paragraph 9, the liability assumed by User under this Agreement, including, but not limited to, User's indemnification obligations, shall not be limited to the insurance coverage stipulated herein.

#### **ARTICLE 10. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS**

- A. Existing connections or facilities that are jointly used by the parties hereto under existing agreements shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- B. Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
- (i) User or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto.
  - (ii) Owner shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto. Upon termination of this Agreement, Owner may at its option remove portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner shall credit User the current fair market value for said salvage.

**ARTICLE 11. ADDITIONS, RETIREMENTS AND ALTERATIONS**

- A. Owner, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- B. If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

**ARTICLE 12. MANAGEMENT AND OPERATIONS**

- A. User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains (locomotives and cars) while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.
- B. User in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains (locomotives and cars,) over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner.
- C. User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Subject Trackage

qualified for operation thereover, and User shall pay to Owner, upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

- D. Owner may conduct an investigation at its option if a User's employee working on Owner's property is alleged to have violated Owner's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, Owner shall schedule the investigation and notify User's local transportation officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Owner's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner shall provide its regulations, supplements, and safety rules to User at no cost.
- E. If Owner conducts an investigation, Owner shall have the right to exclude from the Subject Trackage any employee of User except officers, determined by Owner, as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.
- F. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification shall be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.
- G. If Owner conducts an investigation, its officer shall conduct the investigation, but an officer of User shall be present to assure compliance with User's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, Owner shall promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer shall arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory.
- H. It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner shall be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances,

Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

- I. The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- J. In the event that a train of User shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among User's crew, or due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.
- K. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.
- L. In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the retained or additional employees not been provided.

#### **ARTICLE 13. MILEAGE AND CAR HIRE**

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

#### **ARTICLE 14. CLEARING OF WRECKS**

Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation,

either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- F. For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such employees are on duty as pilots.
- G. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 10 B (ii), all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.
- H. If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- I. In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- J. Notwithstanding any and all of the forgoing provisions of this article, in the event a Loss occurs while the Subject Trackage is being used by Owner and/or User, and such Loss is attributable solely to the intentional misconduct or gross negligence of only one of the parties to this Agreement, then such party shall be solely responsible for such Loss.

#### **ARTICLE 16. CLAIMS**

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

- B. Each party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 or its contracted commitments, if different, applicable to that claim.
- C. In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000).
- F. Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.
- G. It is understood that nothing in this Article 16 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 15.

#### **ARTICLE 17. DEFAULT AND TERMINATION**

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, or in the event a default by Lessee shall have occurred under the Lease or Interchange Agreement dated November 10, 2003 and entered into between Owner and User in conjunction with this Agreement (which shall also be a default under this Agreement), Owner shall have the right at its option, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject

Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages or any other remedies it may have available to it.

**ARTICLE 18. REGULATORY APPROVAL**

- A. Should this Agreement require the prior approval of the Surface Transportation Board (STB), User at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. Owner shall assist and support efforts of User to secure any necessary STB approval of this Agreement.
- B. Upon termination of this Agreement, and if this Agreement was filed by User with the STB pursuant to Part A of this Article 18, User shall immediately make the necessary filing with the STB to discontinue User's rights covered by this Agreement. Should User fail to make such a filing within thirty (30) days of said termination, User hereby expressly authorizes Owner to make such a filing on User's behalf and User shall not oppose such a filing, and shall be responsible for reimbursing Owner for any reasonable cost associated with said filing, including but not limited to attorney and filing fees. User agrees that monetary damages will not be a sufficient remedy in the event it breaches this provision, and agrees that specific performance or other injunctive relief would be appropriate under the circumstances.

**ARTICLE 19. ABANDONMENT OF SUBJECT TRackage**

- A. Notwithstanding the provisions of Article 19, Owner shall have the right, subject to securing any necessary regulatory approval, to abandon the Subject Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, Owner shall give User ninety 90 days' advance notice in writing of its intention to do so in order that User may determine whether it desires to purchase the Subject Trackage (or portion thereof) or to discontinue its use thereof.
- B. If User desires to purchase the Subject Trackage, it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event the offer meets the requirements of the aforesaid section and Owner receives more than one such offer, Owner shall exercise its statutory right to negotiate with User rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to User's acquisition of the Subject Trackage shall be governed by applicable provisions of the law.
- C. In any one of the circumstances listed below User shall be deemed to have determined that it does not desire to purchase the Subject Trackage and that it desires to discontinue its use thereof:

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

In such event User shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Trackage. If User does not promptly file an application seeking approval of the discontinuance of User's operations over the Subject Trackage, Owner shall be deemed to have been given User's power of attorney to take such action on User's behalf.

- D. In the event any application filed by Owner is granted but an application filed by User under Subsection (B) above is denied by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Subject Trackage to User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.
- E. In the event Owner abandons any portion (or all) of the Subject Trackage under circumstances which (because of changes in the law or otherwise) are not subject to handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that User either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.
- F. In the event Owner's application for authority to abandon is denied, User shall withdraw any application it has filed under Sub-article B above.
- G. Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 19 result in an obligation imposed by any competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

#### **ARTICLE 20. TERM**

- A. This Agreement shall be effective the day and year first above written or, in the event Surface Transportation Board (STB) approval is required, on the effective date such approval is secured, and shall remain in full force and effect for 10 years. The trackage rights that are the subject of this Agreement are only intended for a limited term. Upon termination of this Agreement at the end of the ten (10) year term or otherwise, User shall extinguish the trackage rights as provided in Article 18 B.
- B. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

#### **ARTICLE 21. FORCE MAJEURE**

Owner shall not be responsible to User for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, actual or threatened acts of terrorists or the public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

#### **ARTICLE 22. ARBITRATION**

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

#### **ARTICLE 23. SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Neither party hereto shall transfer or assign this Agreement or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

#### **ARTICLE 24. NOTICE**

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

If to Owner:           General Manager-Intercarrier Agreements  
CSX Transportation, Inc.  
500 Water Street, J801  
Jacksonville, FL 32202

If to User:           Vice President-Operating Services  
Golden Isles Terminal Railroad, Inc.  
4337 Pablo Oaks Court, Suite 104  
Jacksonville, FL 32224

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

#### **ARTICLE 25. GENERAL PROVISIONS**

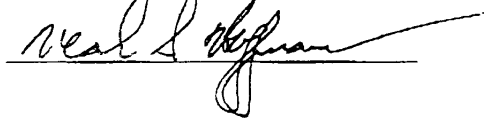
- A. This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.
- B. This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- D. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement. The recitals to this Agreement are made a part of this Agreement as if fully restated herein.
- F. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the

trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes but is not limited to such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.

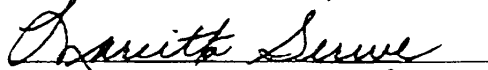
- G. This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- H. Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.
- I. The provisions of Articles 14, 15, 16 and 18 and any other provision that by its terms or meaning intended to service, shall survive any termination of this Agreement.

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

Witness for Owner:



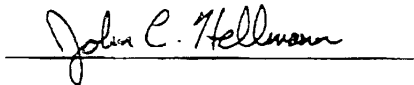
CSX TRANSPORTATION, INC.



Print Name: MARIETTA SERWE

Title: GENERAL MANAGER

Witness for User:



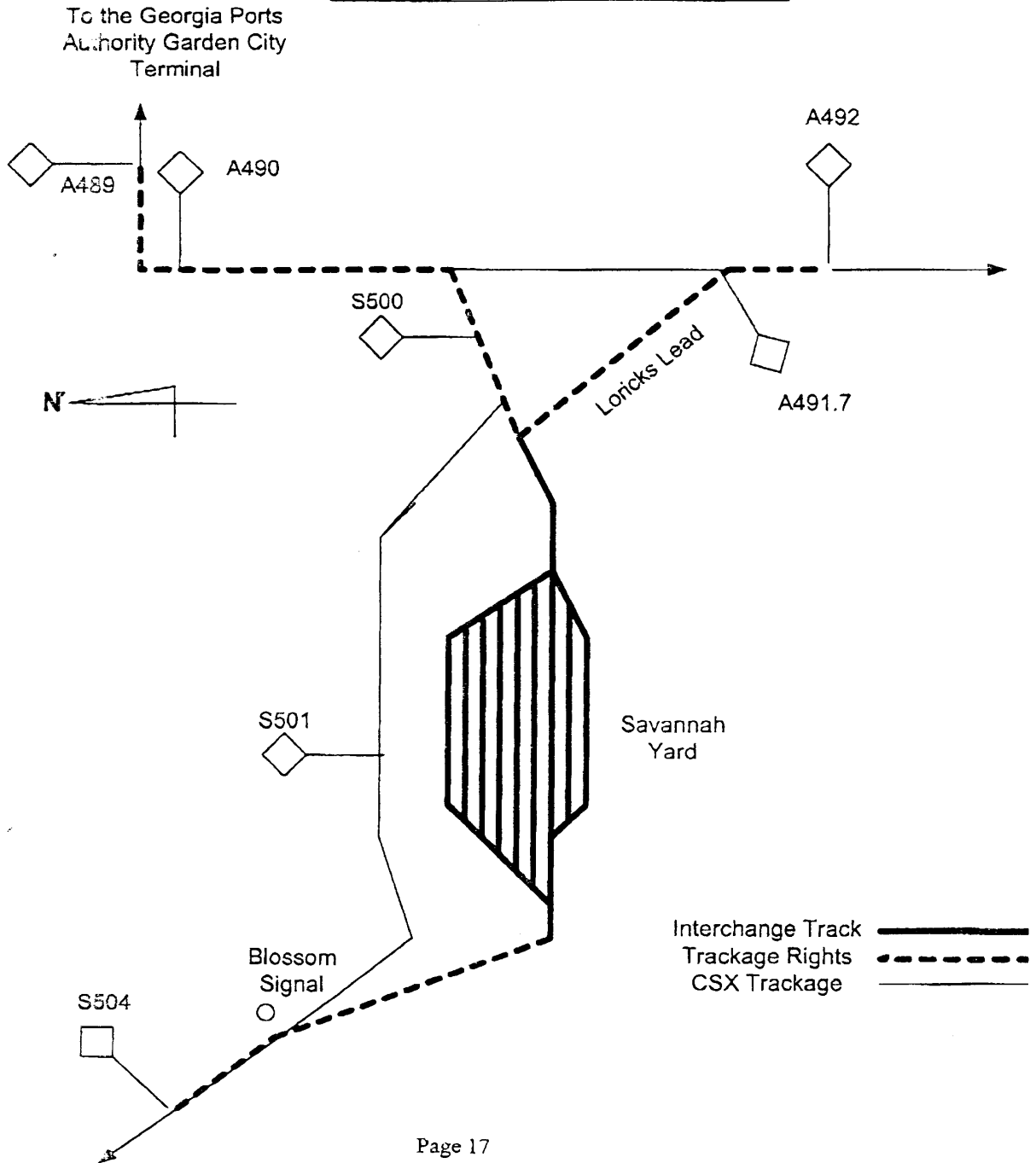
GOLDEN ISLES TERMINAL RAILROAD,  
INC.



Print Name: James W. Benz

Title: President

Exhibit A  
Subject Trackage in Savannah, Georgia  
(Not to Scale)



Trackage Rights