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June 27, 2024

VIA E-FILING

Re: The Central Railroad Company of Indiana – Trackage Rights Exemption –
CSX Transportation, Inc.
Surface Transportation Board Docket No. FD 36791

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Trackage Rights Notice of Exemption for The Central Railroad Company of Indiana ("CIND"). In addition, CIND is filing a motion for protective order under 49 CFR § 1140.14(b).

The filing fee has been paid via pay.gov. If there are any questions related to this filing, please contact me.

Sincerely,

Justin J. Marks
Counsel to The Central Railroad Company of
Indiana

Enclosure

cc: Steven Armbrust, CSX Transportation, Inc.

FILED
June 27, 2024
SURFACE
TRANSPORTATION BOARD

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TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36791

**THE CENTRAL RAILROAD COMPANY OF INDIANA
– TRACKAGE RIGHTS EXEMPTION –
CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

(color images included)

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*Attorneys for
The Central Railroad Company of Indiana*

Dated: June 27, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36791

**THE CENTRAL RAILROAD COMPANY OF INDIANA
– TRACKAGE RIGHTS EXEMPTION –
CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

The Central Railroad Company of Indiana (“CIND”), a Class III railroad, files this Verified Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7), for CIND’s acquisition of trackage rights over a line of railroad owned by CSX Transportation, Inc. (“CSXT”) pursuant to a written amendment to an existing trackage rights agreement between CIND and CSXT. Pursuant to the amended trackage rights agreement, CSXT has agreed to grant an extension of existing overhead trackage rights such that the amended trackage rights apply to “Joint Trackage” comprised of to the following segments of rail line: (a) CSXT’s Cincinnati Terminal Subdivision via Oklahoma Track, #3 Main Track and #1 and #2 Mains and such other terminal trackage as may from time to time be specified by CSXT, between the connection of Oklahoma Track with the Shelbyville Line near the east end of Storrs Yard at or about MP BC 1 and the connection of #1 Main with the trackage of Norfolk Southern Railway Company at Ivorydale Junction, a distance of approximately 6.0 miles (the “Original Joint Trackage”), and (b) approximately 1,135 feet from Ivorydale Junction to NA Tower (+- MP BB 7.5) (the “Extension Trackage”). Following the effectiveness of the written amendment, the Joint Trackage will extend approximately 6 miles and 1,135 feet in the aggregate. A map of the Joint Trackage is attached hereto as Exhibit A. The

amended trackage rights are intended to be effective on the effective date of the Board's decision approving the trackage rights.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal, or modification of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The amended trackage rights covered by this Notice are based upon a written agreement, a copy of which is attached hereto as Exhibit B¹, and are not being sought in a responsive application in a rail consolidation proceeding. Thus, the class exemption is applicable.

Supporting Information

In accordance with the provisions of 49 C.F.R. §1180.4(g), CIND provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

(a)(1)(i) Description of Proposed Transaction

CSXT owns and operates the Joint Trackage which includes: (a) CSXT's Cincinnati Terminal Subdivision via Oklahoma Track, #3 Main Track and #1 and #2 Mains and such other terminal trackage as may from time to time be specified by CSXT, between the connection of Oklahoma Track with the Shelbyville Line near the east end of Storrs Yard at or about MP BC 1 and the connection of #1 Main with the trackage of Norfolk Southern Railway Company ("NSR") at Ivorydale Junction, a distance of approximately 6.0 miles; and (b) approximately 1,135 feet from Ivorydale Junction to NA Tower (+- MP BB 7.5).

¹ A "public" version of the amendment is attached hereto as Exhibit B. CIND is also including a "public version" of the original trackage rights agreement together with the amendment in Exhibit B as information and for ease of reference. CIND is separately filing a Motion for a Protective Order together with "highly confidential" versions of the agreements.

The name, business address and telephone number of Applicant are:

The Central Railroad Company of Indiana
2856 Cypress Way
Cincinnati, OH 45212

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are:

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916

(a)(1)(ii) Consummation Date

CIND intends to commence operations under the amended trackage rights agreement on the effective date of this Notice.

(a)(1)(iii) Purpose of Transaction

CSXT is granting CIND the amended trackage rights for CIND to interchange with CIND's affiliate, Indiana & Ohio Railway Company. CIND will also continue to have the ability to interchange with NSR that was available under the original trackage right agreement.

(a)(5) States in which Property of the Applicant is Situated

CIND currently operates in the states of Ohio and Indiana, and the Joint Trackage is located in Ohio.

(a)(6) Map

A map showing the Joint Trackage is attached as Exhibit A.

(a)(7)(ii) Agreement

“Public versions” of the amended trackage rights agreement, together with the original trackage rights agreement are attached as Exhibit B.

Labor Protection

Applicant understands that any employees adversely affected by the amended trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Company – Trackage Rights – Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. – Lease and Operate – California Western Railroad*, 360 I.C.C. 653 (1980).

Environmental and Historic Documentation

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

Conclusion

Based on the information provided above, CIND requests that the Board issue a notice of exemption for the trackage rights that are the subject of this Notice.

Respectfully submitted,



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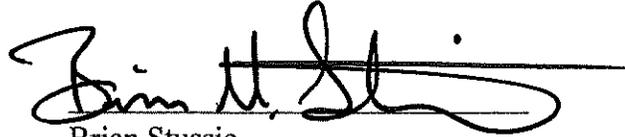
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1001 Pennsylvania Ave. N.W.
Suite 1300 South
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(202) 772-0916
jmarks@clarkhill.com

*Attorneys for
The Central Railroad Company of
Indiana*

Dated: June 27, 2024

VERIFICATION

I hereby verify on behalf of The Central Railroad Company of Indiana, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

A handwritten signature in black ink, appearing to read "Brian H. Stussie", with a long horizontal flourish extending to the right.

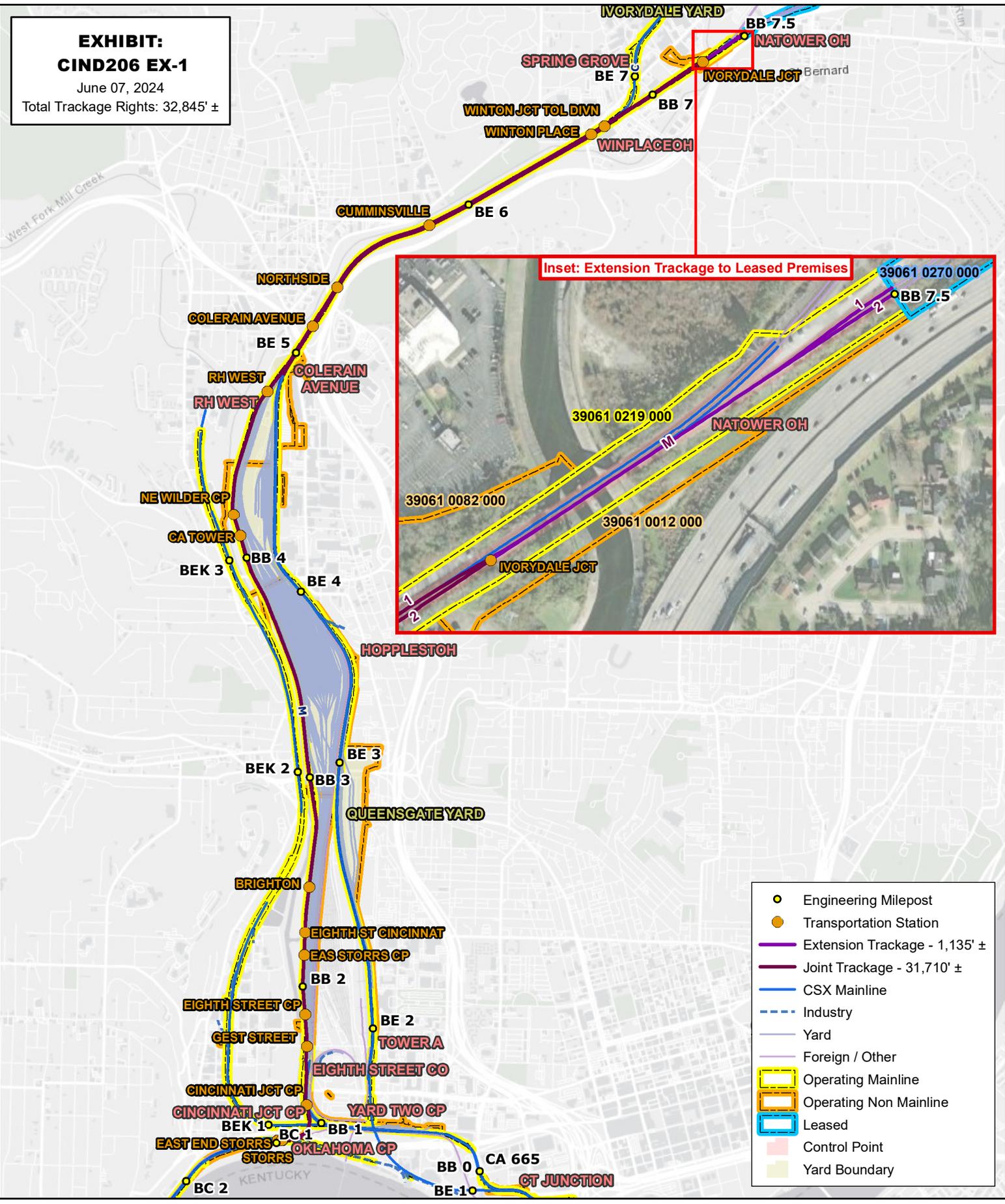
Brian Stussie
President

Dated: June 26, 2024

EXHIBIT A

MAP

EXHIBIT:
CIND206 EX-1
 June 07, 2024
 Total Trackage Rights: 32,845' ±



CSX TRACAGE RIGHTS

CIND over CSXT Cincinnati Terminal
 Hamilton County, Cincinnati, OH

MW - Cincinnati Terminal - Cincinnati Terminal
 Milepost BC 1 to BB 7.5



EXHIBIT B

“PUBLIC VERSIONS”

**AMENDMENT TO
TRACKAGE RIGHTS AGREEMENT**

**ORIGINAL
TRACKAGE RIGHTS AGREEMENT**

CORRECTIVE AMENDMENT

This Corrective Amendment (this “Amendment”), made and entered into this 17th day of June, 2024 (the “Effective Date”) by and between CSX TRANSPORTATION, INC., a Virginia corporation, hereinafter called “CSXT” or “Owner”, and CENTRAL RAILROAD COMPANY OF INDIANA, an Indiana corporation, hereinafter called “CIND” or “User”.

WITNESSETH:

WHEREAS, CSXT and CIND entered into that certain Trackage Rights Agreement dated as of December 30, 1991 (the “1991 TRA”), and

WHEREAS, the parties wish to amend the 1991 TRA to extend the Joint Trackage, as defined in the 1991 TRA, by approximately 1,135 feet as provided herein to reach the trackage leased from CSXT by Indiana & Ohio Railway Company and for the term described herein, and

WHEREAS, the parties wish to address the compensation under the 1991 TRA as provided herein.

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

SECTION 1. EXTENSION OF GRANT OF TRACKAGE RIGHTS.

Section 1 of the 1991 TRA is hereby deleted and restated as follows:

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

- (a) CSXT’s Cincinnati Terminal Subdivision via Oklahoma Track, #3 Main Track and #1 and #2 Mains and such other terminal trackage as may from time to time be specified by CSXT, between the connection of Oklahoma Track with the Shelbyville Line near the east end of Storrs Yard at or about MP BC 1 and the connection of #1 Main with the trackage of Norfolk Southern Railway Company (“NSR”) at Ivorydale Junction, a distance of approximately 6.0 miles; and

(b) Approximately 1,135 feet from Ivorydale Junction to NA Tower (+- MP BB 7.5), with such trackage referred to herein as the “Extension Trackage” and, together with the Original Joint Trackage, the “Joint Trackage.”

SECTION 2. OTHER AMENDMENTS.

The 1991 TRA is hereby amended as follows:

(a) Section 5 of the 1991 TRA is hereby amended by replacing the notice addresses for Owner and User with the following:

“If to Owner: Director Joint Facilities
 CSX Transportation, Inc.
 500 Water Street
 Jacksonville, FL 32202

If to User: The Central Railroad Company of Indiana
 2856 Cypress Way
 Cincinnati, OH 45212
 Attention: President

With a copy to:

Genesee & Wyoming Inc.
20 West Avenue
Darien, CT 06820
Attention: General Counsel”

(b) Section 6 of the 1991 TRA is hereby amended and restated in its entirety as follows:

“The Trackage Rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals of the Joint Trackage to reach the connections specified in the definition of “Joint Trackage” and User shall not perform any local freight service whatsoever at any point located on the Joint Trackage.

User shall at no time during the movements herein contemplated over the Joint Trackage, handle in its trains, any cars other than those specifically interchanged between User and either NSR or IORY.

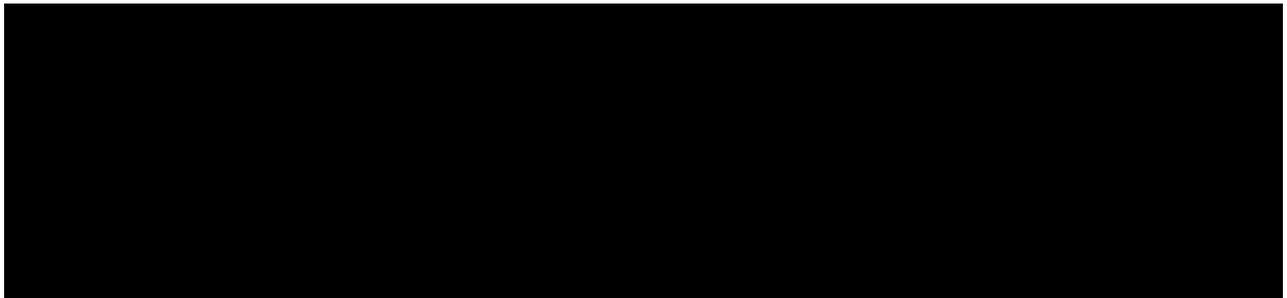
Any violation of this Section by User shall be considered a material breach of this Agreement.”

(c) Exhibit I to the 1991 TRA is hereby deleted in its entirety and is replaced by Exhibit I to this Amendment.

(d) Article 8 of the General Conditions – Form A to the 1991 TRA is hereby amended by adding the following subparagraph (k):

“OTHER THAN IN CONNECTION WITH A THIRD PARTY CLAIM FOR WHICH A PARTY IS ENTITLED TO INDEMNIFICATION UNDER THE AGREEMENT FROM THE OTHER PARTY, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES.”

SECTION 3. COMPENSATION.



Compensation for use of the Extension Trackage after December 31, 2023 will be governed by Section 3 of the 1991 TRA.

SECTION 4. EFFECTIVENESS OF AMENDMENT; TERM.

This Amendment shall be effective upon the Effective Date; provided, however, that Sections 1 and 2(c) of this Amendment shall not become effective until the date of approval or exemption from the Surface Transportation Board of CIND’s authority to operate over the Extension Trackage. Except as provided below, any reference to the 1991 TRA after the Effective Date will be deemed a reference to the 1991 TRA as amended by this Amendment. This Amendment shall be co-terminus with the that certain Lease and Purchase of Rail Improvements Agreement dated October 13, 2004 (as it may be amended) (the “Lease”), and in the event of a termination or expiration of the Lease, the Extension Trackage shall no longer be part of the Joint

Trackage and CIND shall have no right to operate over the Extension Trackage. Termination of the right to operate over the Extension Trackage pursuant to this Section 4 shall have no effect upon the compensation paid or payable pursuant to Section 3 of this Amendment.

SECTION 5. NO OTHER CHANGES.

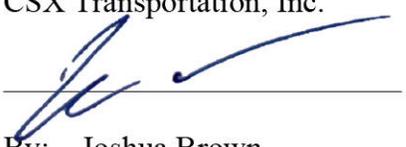
Other than as expressly set forth herein, the terms of the 1991 TRA shall remain in full force and effect.

SECTION 6. COUNTERPARTS.

This Amendment may be executed and delivered in the original, by Portable Document Format (PDF), or by any other generally accepted electronic means, in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered will be deemed an original, but all of which taken together will constitute one and the same agreement.

(signature page follows)

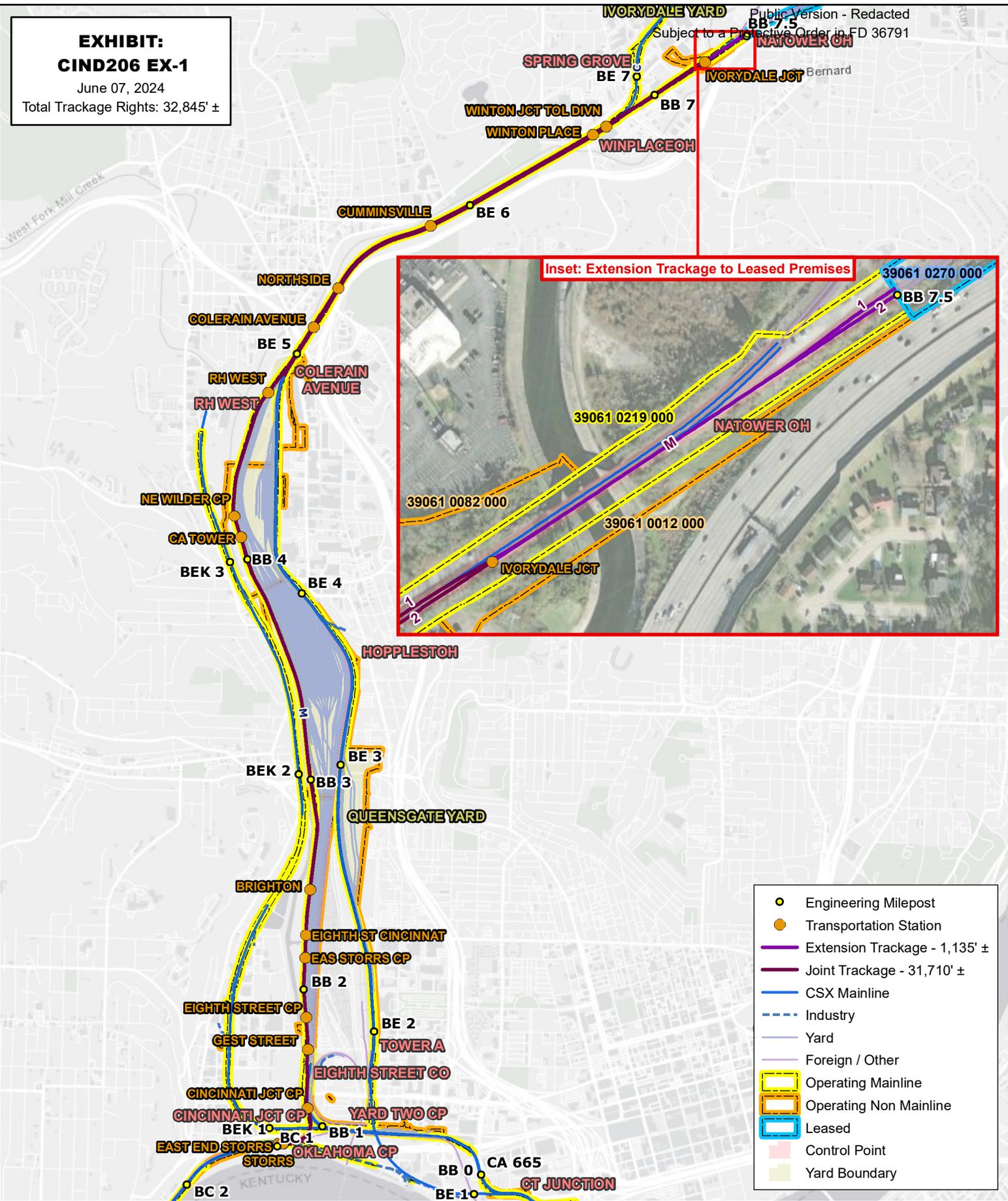
In Witness Whereof, the parties have executed this Amendment as of the Effective Date.

<p>CSX Transportation, Inc.</p>  <p>By: <u>Joshua Brown</u></p> <p>Its: <u>Sr Manager Joint Facilities</u></p>	<p>Central Railroad Company of Indiana</p>  <p>BRIAN STUSSIE - PRESIDENT - 6/24/2024 10:41:18 AM</p> <p>By: _____</p> <p>Its: _____</p>
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(signature page to Amendment to 1991 TRA)

Exhibit I

EXHIBIT:
CIND206 EX-1
 June 07, 2024
 Total Trackage Rights: 32,845' ±



- Engineering Milepost
- Transportation Station
- Extension Trackage - 1,135' ±
- Joint Trackage - 31,710' ±
- CSX Mainline
- - - Industry
- Yard
- Foreign / Other
- ▭ Operating Mainline
- ▭ Operating Non Mainline
- ▭ Leased
- ▭ Control Point
- ▭ Yard Boundary



CSX TRackage RIGHTS

CIND over CSXT Cincinnati Terminal
 Hamilton County, Cincinnati, OH

MW - Cincinnati Terminal - Cincinnati Terminal
 Milepost BC 1 to BB 7.5



0 1,000 2,000 3,000 4,000 Feet

AGREEMENT

Dated as of December 30, 1991

between

CSX TRANSPORTATION, INC.

and

CENTRAL RAILROAD COMPANY OF INDIANA

Relating to Trackage Rights

in Cincinnati Terminal, OH

A G R E E M E N T

THIS AGREEMENT, made and entered into this 30th day of December, 1991, by and between CSX TRANSPORTATION, INC., a Virginia corporation, hereinafter called "CSXT" or "Owner", and CENTRAL RAILROAD COMPANY OF INDIANA, an Indiana corporation, hereinafter called "CIND" or "User";

WITNESSETH:

WHEREAS, CIND has secured authority from the Interstate Commerce Commission, hereinafter called "ICC", to acquire and operate Consolidated Rail Corporation's (Conrail's) line of railroad between Indianapolis, IN and Cincinnati, OH, hereinafter called the "Shelbyville Line"; and

WHEREAS, Conrail proposes to sell the Shelbyville Line to CIND for continued operation by CIND; and

WHEREAS, In connection with the aforesaid operation, it will be necessary for CIND to operate over Cincinnati Terminal trackage of CSXT to reach Conrail's Sharonville, OH yard for purposes of interchange between CIND and Conrail; and

WHEREAS, CSXT is agreeable to granting CIND trackage rights to permit the subject interchange with Conrail.

NOW, THEREFORE, the parties hereto, intending to be legally

bound, agree as follows:

SECTION 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, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Owner's railroad shown on the plan attached hereto, made a part hereof and marked "Exhibit I" (hereinafter referred to as the "Joint Trackage"):

CSXT's Cincinnati Terminal Subdivision via Oklahoma Track, #3 Main Track and #1 and #2 Mains and such other terminal trackage as may from time to time be specified by CSXT, between connection of Oklahoma Track with the Shelbyville Line near the east end of Storrs Yard and connection of #1 Main with trackage of Conrail at Ivorydale Junction, a distance of approximately 6.0 miles.

SECTION 2. GENERAL CONDITIONS - FORM A.

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

SECTION 3. COMPENSATION

- (a) For the use it makes of the Joint Trackage, User shall pay to Owner [REDACTED], hereinafter referred to as the "Current Charge", said Current Charge reflecting the movement of approximately [REDACTED] cars including locomotive units a distance of [REDACTED], at a Per Car Mile Charge of [REDACTED]
- (b) User will furnish to Owner, in care of Division Manager, Corbin Division, Lynn Avenue, P. O. Drawer 1500, Corbin, KY 40702, with copy to Manager, Joint Facility Billing & Accounting, 100 North Charles Street B3F, Baltimore, MD 21201, at the end of each month, a statement of the number of locomotive units, cabooses, and loaded and empty cars operated over the Joint Trackage during the month. Based on this statement, Owner will once annually on the anniversary date of this Agreement, restate the Current Charge for the succeeding one year term, to reflect the average daily number of cars moved by User in the year immediately preceding.
- (c) The Current Charge may be subsequently further revised each year to reflect any revisions in the aforesaid Per Car Mile Charge in accordance with Article 2 of the General Conditions - Form A.

- (d) In no event, shall User pay to Owner [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] said amount to be known as the "Minimum Charge", and to be revised each year in accordance with Article 2 of the General Conditions - Form A.

SECTION 4. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS.

- (a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements or practices. This provision shall include maintenance of Oklahoma Track and connection between Owner and User near east end of Storrs Yard, which maintenance is provided by CSXT and shall be billable to CIND in accordance with provisions of Agreement date december 29, 1881 between predecessors of Owner and Conrail.
- (b) Any additional connections to the Joint Trackage which may be required 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 their 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; and

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

SECTION 5. 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:

- (a) If to Owner: Senior Vice President - Transportation
 CSX Transportation, Inc.
 500 Water Street
 Jacksonville, FL 32202

- (b) If to User: President
 Central Railroad Company of Indiana
 P. O. Box 554
 Kokomo, IN 46903-0554

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

SECTION 6. RESTRICTION ON USE.

The Trackage Rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals of the Joint Trackage and User shall not perform any local freight service whatever at any point located on the Joint Trackage.

User shall at no time during the movements herein contemplated over the Joint Trackage, handle in its trains, any cars other than those specifically interchanged between User and Conrail.

SECTION 7. TERM.

- (a) Providing that User acquires the Shelbyville Line from Conrail, and commences operations thereover, this Agreement shall be effective the day and year User commences operations, or, in the event Interstate Commerce Commission approval is required, on the date such approval is secured, and shall remain in force from year to year until terminated upon not less than ninety (90) days advance written notice by either party to the other party of its intent to terminate this Agreement at the end of the then current term. This Agreement shall be null and void if for any reason, User does not acquire the Shelbyville Line from Conrail, or if within ninety (90) days following such

acquisition, User fails to commence operations thereover.

- (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.

SECTION 8. MISCELLANEOUS SPECIAL PROVISIONS.

- (a) When operating over Joint Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on Joint Trackage.
- (b) Procedures for qualification and occupancy of the subject Joint Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

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

WITNESS

CSX TRANSPORTATION, INC.

John W. Bartlett III

By M. L. Houchens
Title Assistant Vice President
Joint Facilities

WITNESS

CENTRAL RAILROAD COMPANY OF INDIANA

Henry E. Vella

By John S. [Signature]
Title

Approved as to legal form

Charles M. Rosenberger
Charles M. Rosenberger

GENERAL CONDITIONS - FORM A

TO INTERCHANGE AGREEMENT DATED AS OF December 30, 1991 BETWEEN
CSX TRANSPORTATION, INC. (CSXT OR OWNER) AND CENTRAL RAILROAD
COMPANY OF INDIANA (CIND or USER) RELATING TO TRACKAGE RIGHTS AT
CINCINNATI TERMINAL, OH.

ARTICLE 1. USE OF JOINT TRACKAGE.

- (a) User's use of the Joint Trackage shall be in common with Owner and any other user of the Joint Trackage, and Owner's right to use the Joint Trackage shall not be diminished by this Agreement. Owner shall retain the right to grant to other persons rights of any nature in the Joint Trackage.
- (b) User shall not use any part of the Joint Trackage for the purpose of switching, storage of cars, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purposes.
- (c) Owner shall have exclusive control of the management and operation of the Joint Trackage.
- (d) Unless otherwise stated in this Agreement, User shall have the right to operate in either direction over the

Joint Trackage.

ARTICLE 2. REVISION OF CURRENT CHARGE.

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

(b) [REDACTED]

(c) [REDACTED]

[REDACTED]

[REDACTED]

(d) [REDACTED]

(e) At the option of either party hereto, the compensation provided for in Section 3 and this Article 2 of this Agreement shall be open for renegotiation every [REDACTED] [REDACTED] from the Commencement Date, as hereinafter

defined. In the event the parties fail to reach agreement upon such negotiation, such failure shall not constitute a breach of this Agreement, and the parties shall continue to be bound by the terms of compensation provided in said Section 3 and Article 2 until the matter is settled or submitted to binding arbitration as outlined in Article 14 of these General Conditions.

ARTICLE 3. ADDITIONS, RETIREMENTS AND ALTERATIONS.

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

- (b) If the parties agree that changes in or additions and betterments to the Joint Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost thereof, including the

annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 4. MAINTENANCE OF JOINT TRACKAGE.

- (a) Except as otherwise specified in Section 4 hereof, Owner shall maintain, repair and renew the Joint Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Joint Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Joint Trackage or that operations thereover will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Article 8 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Joint Trackage, have or make any claim or demand against Owner or its officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.
- (b) Owner shall also perform, at the expense of User, such additional maintenance as User may require or request.

ARTICLE 5. 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, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Joint Trackage. User shall indemnify, protect, defend, and save harmless Owner and its officers, agents and employees from and against all fines, penalties and liabilities imposed upon Owner or its officers, agents, 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 Joint Trackage shall comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Joint Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Joint Trackage as published in

Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner.

- (c) While using the Joint Trackage, User's employees must wear safety glasses with side shields when on or around engines or cars.
- (d) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Joint Trackage qualified for operation thereover, and User shall pay to Owner, promptly upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.
- (e) 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 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 will schedule the investigation and notify User's local Transportation Officer in the territory thereof, who will, 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 will provide its regulations, supplements, and safety rules to User at no cost.

- (f) If Owner conducts an investigation, Owner shall have the right to exclude from the Joint 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.
- (g) 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 will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.
- (h) If Owner conducts an investigation, its officer will conduct the investigation, but an officer of User will

be present to assure compliance with User's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, Owner will promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer will 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.

- (i) 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 will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

- (j) The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Joint Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient manner of movement of all traffic.
- (k) In the event that a train of User shall be forced to stop on Joint 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 Joint Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (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 Joint Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.
- (l) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars

in order to move them off the Joint Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.

- (m) 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 6. MILEAGE AND CAR HIRE.

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

ARTICLE 7. CLEARING OF WRECKS.

Whenever User's use of the Joint Trackage requires rerailling, 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 resulting therefrom, shall be apportioned in accordance with the provisions of Article 8 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

ARTICLE 8. LIABILITY.

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

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

regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner or its officers, agents or employees.

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

locomotives, cars (including without limitation lading) and equipment operated by each of them and for injury to and death of their officers, agents and employees, and persons in each of their care and custody, and all liability, cost and expense for injury to and death of any other person whomsoever, and for loss of, damage to and destruction of all other property (including without limitation the Joint Trackage) so occurring, shall be borne equally by Owner and User, including without limitation all cost and expense referred to in Article 7 hereof. Whenever any liability, cost or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify and save harmless the other party to this Agreement and its officers, agents and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its officers, agents or employees.

- (d) Except as provided in paragraph (e) below, whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of, both User and any other user of the Joint Trackage

being involved, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner, User or any other user of the Joint Trackage or their officers, agents or employees, then any such other user shall be considered as Owner for the purpose of determining between the parties to this Agreement, User's assumption and apportionment of liability, cost and expense under paragraph (c) above.

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

person or persons whomsoever, occurs without the trains, locomotives, cars or equipment of, or in the account of, either Owner or User or any other user being involved, or if it cannot be determined which party's trains, locomotives, cars or equipment are involved, Owner and User shall separately assume and bear all liability, cost, and expense for injury to and death of each of their officers, agents, and employees, and persons in each of their care and custody, and all liability, cost, and expense for injury to and death of any other person or persons whomsoever, and for loss of, damage to, and destruction of all other property so occurring shall be borne equally by Owner and User.

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

loss, damage, destruction, injury or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost and expense in connection with the loss, damage, destruction, injury or death so occurring, including without limitation, all cost and expense referred to in Article 7 hereof, and said party shall forever protect, defend, indemnify and save harmless the other party to this Agreement, and its officers, agents and employees from and against any such liability, cost and expense.

- (h) In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay 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.
- (i) For purposes of this Article 8, pilots furnished by Owner to User pursuant to Article 5(d) of these General

Conditions shall be considered as the employees of User while such pilots are on board or getting on or off trains of User.

- (j) Notwithstanding the provisions of Article 16(f) of these General Conditions, for the purpose of this Article 8, the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Joint Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Joint Trackage or its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

ARTICLE 9. INSURANCE

- (a) During the term of this Agreement User agrees to procure and maintain at its sole cost and expense railroad operating and liability insurance, hereinafter called "INSURANCE", naming User as the insured and covering the liability assumed by it and its agents under the terms of this Agreement and by virtue of User's usage of Owner's trackage. The Insurance shall include liability for foreign rolling stock and cargo in the care, custody or control of User and contain a contractual liability endorsement which will

specifically grant coverage for all liability assumed
under this Agreement. [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

- (b) The Insurance shall contain provisions obligating the insurer to provide Owner with notice of cancellation, material modification or nonrenewal at least thirty (30) days prior to the effective date thereof.

- (c) The Insurance shall be evidenced by a current certificate of insurance addressed to Owner as certificate holder, which certificate shall be subject to the prior approval of Owner's Risk Management Department. All of the required endorsements and notice provisions shall be stated on the certificate of insurance which is provided to Owner.

ARTICLE 10. INVESTIGATION.

- (a) Except as provided in Subarticle (b) of this Article 9, 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 will investigate, adjust and defend all freight loss and damage claims filed with it in accordance with Section 11707 of the Interstate Commerce Act.
- (c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- (d) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- (e) Excluding freight loss and damage claims filed in accordance with Section 11707 of the Interstate Commerce Act, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds

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

ARTICLE 11. PAYMENT OF BILLS.

- (a) All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.
- (b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 3, 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 12. DEFAULT AND TERMINATION.

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Joint Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

ARTICLE 13. REGULATORY APPROVAL.

- (a) Should this Agreement require the prior approval of the Interstate Commerce Commission (ICC), User at its own cost and expense will initiate and thereafter diligently pursue an appropriate application or petition to secure such approval and this Agreement shall take effect on the effective date of such approval (herein referred to as the "Commencement Date"). The Commencement Date shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto. In the event ICC approval is not required, the Commencement Date shall be the date and year first above written, as

evidenced by an exchange of correspondence referred to above. Owner will assist and support efforts of User to secure ICC approval of this Agreement.

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

ARTICLE 14. ABANDONMENT OF JOINT TRACKAGE.

Notwithstanding the provisions of Section 7 of this Agreement, Owner may abandon the Joint Trackage during the term of this Agreement or any renewals thereof, upon giving User not less than ninety (90) days' notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Joint Trackage, User will seek and exercise such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Joint Trackage. Owner and User will exercise the abandonment and discontinuance authority within thirty (30) days from the date Owner and User obtain the aforementioned regulatory authority. Upon the date established by Owner for abandonment of the Joint Trackage by its aforesaid notice to User or upon the above-specified date of exercise of

the regulatory authority to abandon and discontinue operations, whichever is later, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. The foregoing provisions shall govern the parties hereto notwithstanding the provisions of 49 U.S.C. Sections 10905-10906 or any other provisions of law, and User hereby expressly waives any rights it may possess to subsidize operations on the Joint Trackage or to acquire the Joint Trackage pursuant to said provisions of law. As used herein, Joint Trackage means the entire Joint Trackage or any portion or portions thereof.

ARTICLE 15. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through binding arbitration by a sole, disinterested arbitrator to be selected jointly by the parties. If the parties fail to select such arbitrator within sixty (60) days after demand for arbitration is made by either party hereto, then they shall jointly submit the matter to 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.

ARTICLE 16. 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 17. GENERAL PROVISIONS.

- (a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any 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) All Section and Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- (c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties hereto.

- (d) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by both parties to this Agreement.
- (e) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- (f) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

EXHIBIT I

RAILROADS & YARDS IN CINCINNATI AND VICINITY

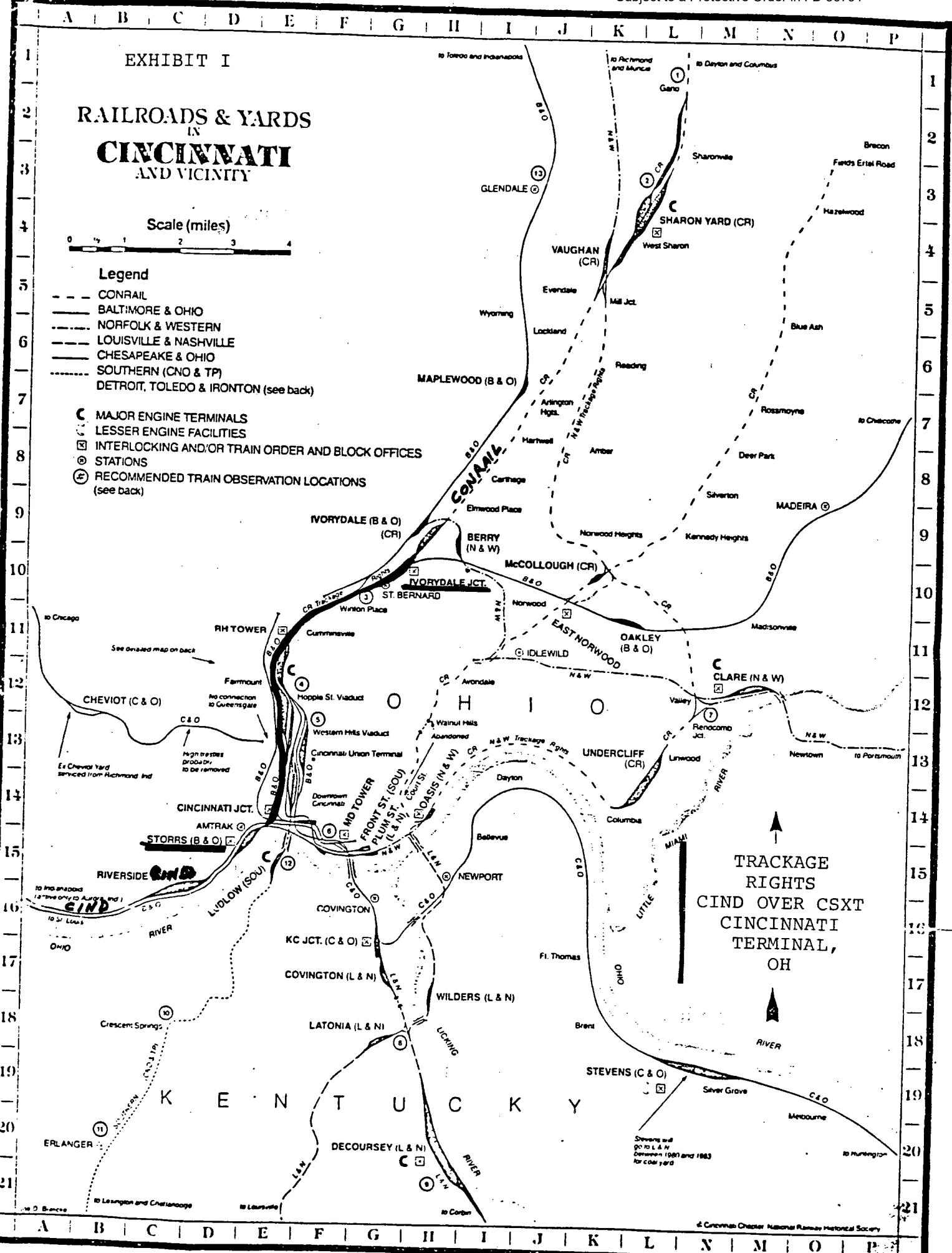
Scale (miles)



Legend

- - - CONRAIL
- BALTIMORE & OHIO
- - - NORFOLK & WESTERN
- - - LOUISVILLE & NASHVILLE
- CHESAPEAKE & OHIO
- - - SOUTHERN (CNO & TP)
- - - DETROIT, TOLEDO & IRONTON (see back)

- C MAJOR ENGINE TERMINALS
- LESSER ENGINE FACILITIES
- INTERLOCKING AND/OR TRAIN ORDER AND BLOCK OFFICES
- ⊙ STATIONS
- ⊕ RECOMMENDED TRAIN OBSERVATION LOCATIONS (see back)



TRACKAGE RIGHTS
CIND OVER CSXT
CINCINNATI
TERMINAL,
OH

Drawings will go to E & W between 1981 and 1983 for coal yard